

New York City Department of Finance

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The City Sheriff, by and through the New York City Department of Finance (“DOF”), is proposing a rule relating to the City Sheriff’s enforcement of unlicensed cannabis activity. This rule is being proposed as a continuation of the rule adopted on an emergency basis and published in the May 7, 2024 issue of the City Record. This proposed rule would: establish a regulatory framework for the City Sheriff to conduct administrative inspections; specify the civil penalties for violations of Administrative Code 7-551; establish how the City Sheriff may designate personnel of other City agencies to conduct enforcement efforts; outline the circumstances in which the Sheriff may seal a place of business; and detail other mechanisms necessary to achieve a comprehensive enforcement of unlicensed cannabis activity.

When and where is the hearing? NYC Department of Finance will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 AM on Wednesday, July 31, 2024. The hearing will be conducted remotely through Webex Event Center. To participate in the public hearing, enter the Webex URL <https://nycdof.webex.com>. If prompted to provide the meeting number, please enter: 2336 134 3309; If prompted for a password, please enter the following: Cannabis72024. You can also participate in the hearing via telephone by calling 1-646-992-2010 (New York City); or 1-408-418-9388. The meeting access code is 233 613 43309.

This location has the following accessibility option(s) available:
Simultaneous transcription for people who are deaf or hard of hearing and audio-only access

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the NYC Department of Finance through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to DOFRules@finance.nyc.gov.
- **Mail.** You can mail comments to NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, NY 10038, Attn: Jeffrey Baldwin.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Jeffrey Baldwin, at (212) 748-6981.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (212) 748-7214. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? The deadline to submit written comments is Wednesday, July 31, 2024.

What if I need assistance to participate in the hearing? You must contact NYC Department of Finance’s Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone by calling Joan Best at (212) 748-

7214; or by email at bestj@finance.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please provide at least 72 hours' notice prior to the hearing to ensure availability.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a video recording of oral comments concerning the proposed rule will be available on the DOF website. Copies of these documents may also be reviewed at NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30th Floor, New York, N.Y. 10038.

What authorizes NYC Department of Finance's to make this rule? Sections 1043(a), and 1503 of the City Charter, as well Chapter 5-A of Title 7 of the Administrative Code of the City of New York (as added by Part G of Chapter 55 of the Laws of 2024) authorize the Department to make this proposed rule. This proposed rule is a continuation of the rule adopted on an emergency basis and published in the May 7, 2024, issue of the City Record. As such, this proposal is being made in accordance with Section 1043(i) of the City Charter. This proposed rule was not included in the Department's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the NYC Department of Finance's rules? The NYC Department of Finance's rules are in title 19 of the Rules of the City of New York. See the link below. <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-34211>

What laws govern the rulemaking process? NYC Department of Finance must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 11 of Part G of Chapter 55 of the Laws of 2024 added a new Chapter 5-A to Title 7 of the New York City Administrative Code (the "Administrative Code"). Section 7-552(a) of the Administrative Code establishes a regulatory framework applicable to the Office of the City Sheriff ("City Sheriff"), which is contained within the Department of Finance. This regulatory framework enables the City Sheriff to conduct administrative inspections of places of business where cannabis, cannabis products, or any product marketed or labeled as such, are sold, offered to be sold, where no registration, license, or permit has been issued pursuant to the New York State Cannabis Law. Administrative Code section 7-551 authorizes the City Sheriff to issue civil summonses for engaging in such conduct, among other violations. Section 7-552(b)(1) authorizes the City Sheriff to issue an order to anyone engaged in conduct prohibited by section 7-551 to cease such prohibited conduct. An order to cease may only be issued to the business engaged in the prohibited conduct or the owner of such business. Administrative Code section 7-552(b)(2) authorizes the City Sheriff to execute and order the sealing of certain places of business where such conduct continues after an inspection has revealed violations, or where such conduct poses

an imminent threat to public health, safety, and welfare.

On May 2, 2024, City Sheriff Anthony Miranda, Department of Finance Commissioner Preston Niblack and Mayor Eric Adams approved an emergency rule to implement the regulatory scheme authorized by Chapter 5-A of Title 7 of the Administrative Code pursuant to Charter section 1043(i). On May 7, 2024, a copy of this emergency rule was published in the City Record. This emergency rule was necessary because unlicensed cannabis retailers pose a risk to the public by selling unregulated cannabis products that have the potential to cause harm to consumers. Before the emergency rule was implemented, the City estimated that 2,800 unlicensed cannabis retailers were operating within its borders, and despite the effectiveness of the emergency rule, the majority of those retail stores continue to operate. Many of these retail stores are located near schools and public youth facilities and sell cannabis products in packaging displaying cartoon characters and bright colors, which entice children to purchase them. These unlicensed cannabis retailers operate in flagrant violation of the law and undermine the statutory framework of licensure and permit issuance established by the State Cannabis Law. Since the implementation of the emergency rule, the public has submitted additional complaints regarding unlicensed retail stores, and the City Sheriff now estimates that 3,600 unlicensed cannabis retail stores are operating within the City's borders.

Pursuant to Charter section 1043(i), an emergency rule remains in effect only for 60 days unless the applicable agency proposes to promulgate a final rule within such 60-day period. This final rule process affords an opportunity for notice and comment by the public. Pursuant to this Charter provision, the relevant agency may extend the effectiveness of the emergency rule for an additional 60 days to a total of 120 days while the procedures necessary to promulgate a permanent rule under the City Administrative Procedures Act ("CAPA") continue.

The Department of Finance hereby extends the effectiveness of the May 2, 2024 emergency rule until August 30, 2024 and further proposes here a final rule, which would be substantially similar to the May 2, 2024 emergency rule.

Like the emergency rule currently in place, this proposed rule would implement various elements of the statutory framework contained within Chapter 5-A to Title 7 of the Administrative Code by proposing a permanent section 42-04 to Title 19 of the Rules of the City of New York, titled Sheriff's Enforcement of Unlicensed Cannabis Activity.

Proposed subdivision a of section 42-04 of this rule would provide definitions for the terms "cannabis," "City Sheriff," "place of business," "property owner," "public youth facility," and "school," which apply throughout proposed section 42-04.

Proposed subdivision b of section 42-04 would establish a framework for the City Sheriff to conduct administrative searches pursuant to Administrative Code section 7-552(a). Specifically, subdivision b would elaborate on the statutory civil administrative enforcement framework by authorizing the City Sheriff to establish a schedule of inspections based on an inspection roster. The roster would be compiled by the City Sheriff and the places of business listed on it would be inspected based on observations by law enforcement officers, statements made, signage,

advertising materials associated with a place of business, and complaints received by the City Sheriff. The roster would essentially carry over the existing roster document established under the May 2, 2024 emergency rule. The purpose of the proposed inspection roster is to ensure that the inspections authorized under the applicable statutory framework are conducted with regularity and certainty, while still allowing the City Sheriff to promote the goals of Part G of Chapter 55 of the Laws of 2024 and prioritize searches where the City Sheriff reasonably believes a place of business poses an imminent threat to public health, safety, and welfare, or where illegal conduct has been confirmed to be occurring. To promote the efficient use of enforcement resources, the City Sheriff would be authorized to inspect any place of business that is within a reasonable vicinity of a place of business otherwise scheduled for inspection. This roster may be subdivided into two or more geographic zones for the purposes of organizing inspection activity to further the efficiency of the City Sheriff's efforts.

Proposed subdivision b of section 42-04 would also clarify that the City Sheriff is authorized to conduct these inspections within both the public and non-public portions of a place of business, but does not limit any City agency's authority to engage in law enforcement activity. For example, the establishment of this administrative inspection framework would not limit agencies from conducting otherwise authorized law enforcement activity in the public portions of places of business, or pursuant to any other existing authority.

Proposed subdivision c of this section would establish a regulatory penalty schedule for violations of Administrative Code section 7-551(a). Administrative Code section 7-551(a) authorizes civil penalties for violations of Cannabis Law sections 125(1) and (1-a) and 132(1) and (8). These provisions of the Cannabis Law cover a wide range of illegal conduct, including distributing for sale or selling at wholesale or retail or delivering to consumers any cannabis, or engaging in an indirect sale or offering to sell such products, without obtaining the appropriate registration, license, or permit therefor required by the New York State Cannabis Law. These provisions also authorize civil summonses against persons who own such places of business. Civil summonses issued pursuant to this authority would be subject to adjudication before the City Office of Administrative Trials and Hearings, in accordance with Administrative Code section 7-551(c). For each day in which a violation occurs, the place of business or the person who owns the place of business, as applicable, would be subject to a \$10,000 penalty. Failure to appear for the hearing at the date, place and time designated for the hearing, or the scheduled date following an adjournment, would result in a \$10,000 default penalty.

Penalties imposed pursuant to each civil summons would be in addition to, and would not offset or be modified by, any fines or penalties imposed pursuant to any other provision of law or rule. Other remedies under the law, such as injunctive relief or sealing orders, would be independent of and in addition to the penalties in this proposed subdivision c. The City Sheriff would be authorized to issue multiple violations pursuant to this proposed subdivision to a person or place of business under a single civil summons; however, the cumulative penalties that may be imposed under a single civil summons would not be authorized to exceed \$25,000. The \$25,000 cumulative maximum penalty would not apply across multiple civil summonses issued to the same respondent.

Proposed subdivision d of section 42-04 establishes a framework through which the City Sheriff may designate the personnel of other agencies of the City to exercise various enforcement powers pursuant to Administrative Code section 7-552(e). To provide adequate public notice, this subdivision provides that the City Sheriff designate such personnel in writing and post such designation on the website of the Department of Finance. This proposed subdivision d would also allow for the revocation of designations through a similar process.

Proposed subdivision e of section 42-04 would establish a framework for the Office of the Sheriff to determine those activities that pose an imminent threat to public health, safety, and welfare. Administrative Code section 7-552(b)(2) authorizes a procedure to seal a place of business, akin to Cannabis Law section 138-b, in circumstances including but not limited to where such an imminent threat is identified. Cannabis Law § 138-b(4) establishes a list of factors that may result in a finding of an imminent threat. Proposed subdivision e of section 42-04 of this rule provides that the City Sheriff will consider the totality of such factors in determining whether an imminent threat is present and also provides that a single factor would be sufficient to give rise to that determination. This subdivision would also clarify what constitutes proximity to a place of worship, a school or a public youth facility for the purpose of this proposed rule. These standards for determining proximity are reasonable considering the legislative purpose of Part G of Chapter 55 of the Laws of 2024 and associated public welfare concerns. The distances listed in this proposed rule differ from some other similar metrics in the Cannabis Law, which are applicable to the siting of regulated cannabis retailers. The distances in this proposed rule were determined to be appropriate considering the illegal nature of the businesses subject to this rule. The greater distances included in this proposed rule reflect the more serious risks that illegal businesses pose. This risk, including the associated deleterious effect upon the regulated legal cannabis industry, is at the heart of the Legislature's enactment of Part G.

Proposed subdivision f of section 42-04 of this rule would set forth the procedure for the Sheriff to provide tracking information and broad categorical summaries of cannabis and other related items seized by the City Sheriff that were offered for sale or otherwise used as an instrumentality of a violation of Administrative Code section 7-551(a). This proposed subdivision also establishes requirements for the storage and cataloging of seized cannabis and other items.

Proposed subdivision g of section 42-04 would provide a process for individuals to petition in writing for the return of cannabis or other related items seized pursuant to Administrative Code section 7-552(b)(3), or to challenge orders to cease prohibited conduct issued pursuant to Administrative Code section 7-552(b)(1). This subdivision also clarifies that City Sheriff must not return cannabis or other related items that have been seized where the return of such seized cannabis or other related items would be a violation of, or would facilitate the violation of, any applicable law.

Proposed subdivision h of section 42-04 would establish the procedures applicable to properties for which a sealing order is in place or for which a sealing order has been ordered to continue Administrative Code section 7-552(b)(2). This subdivision establishes a process for a respondent or property owner to petition the City Sheriff for a decision to vacate an order to seal issued pursuant to Administrative Code section 7-552(b)(2) and subdivisions 9 and 11 of section 138-b of the Cannabis Law. This provision clarifies that where a respondent has submitted a petition to

vacate a sealing order while an administrative proceeding regarding the sealing is ongoing, the City Sheriff will not review such petition until the administrative proceeding is concluded. This framework strikes a careful balance between the need to ensure that the conduct has abated or the tenant has vacated, as applicable, and the need to ensure the rights of property owners and respondents seeking to engage in lawful business activities. This provision was not included in the May 2, 2024 emergency rule, described above.

In order to ensure adequate notice to individuals regarding the City Sheriff's response to petitions challenging such seizures and orders to cease, as well as determinations regarding the continuation of orders to seal pursuant to Administrative Code section 7-552(b)(2) and the vacatur of orders pursuant to subdivision h of this rule, subdivision i of this rule would include a process to determine the appropriate address to which correspondence must be mailed in proposed subdivision h of section 42-04.

Section 1. Chapter 42 of Title 19 of the Rules of the City of New York is amended by adding a new section 42-04 to read as follows:

§ 42-04. Sheriff's Enforcement of Unlicensed Cannabis Activity.

a. Definitions. For the purposes of this section, the following terms have the following meanings:

Cannabis. The term "cannabis" means any cannabis or a cannabis product, as such terms are defined in section 3 of the Cannabis Law, or any product marketed or labeled as such.

City Sheriff. The term "City Sheriff" means the Sheriff of the City of New York, deputies of the City Sheriff and other authorized personnel of the Office of such City Sheriff.

Place of business. The term "place of business" means any building, structure or vehicle where cannabis, is sold or offered to be sold, where no registration, license, or permit has been issued pursuant to the Cannabis Law. "Place of business" shall not include a residence or other real property not otherwise held out as open to the public or otherwise being utilized in a business or commercial manner, or any private vehicle on or about such property, unless probable cause exists to believe that such residence, real property, or vehicle are being used in such business or commercial manner for a purpose described in the preceding sentence.

Property owner. The term "property owner" means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the subject premises.

Public youth facility. The term "public youth facility" means a building or structure, including any surrounding outdoor grounds, entrances and exits, any portion of which:

1. is owned by a governmental entity;

2. is accessible to the public; and

3. has a primary purpose to provide recreational opportunities or services to children or adolescents of whom the primary population is reasonably expected to be 17 years of age or younger.

School. The term “school” means a building or structure, including any surrounding outdoor grounds, entrances and exits, that contains a public or private pre-school, nursery school, elementary or secondary school.

b. Administrative inspections. 1. For the purposes of civil administrative enforcement of Chapter 5-A of Title 7 of the Administrative Code, the City Sheriff may conduct regulatory inspections of any place of business where cannabis is sold or offered to be sold, where no registration, license, or permit has been issued pursuant to the Cannabis Law, in accordance with the procedures set forth in this subdivision.

2. For the purpose of detecting administrative violations in accordance with the regulatory scheme set forth in section 7-552 of the Administrative Code, the City Sheriff shall inspect each place of business listed on the inspection roster compiled pursuant to paragraph 3 of this subdivision such that each place of business included on such roster, or a discrete geographic zone of such roster, is inspected at least annually, or on a more frequent periodic basis deemed appropriate by the City Sheriff, provided that:

(a) the City Sheriff is not required to conduct an inspection of a place of business during a period in which such place of business is either closed or sealed;

(b) the City Sheriff may prioritize inspections of places of business included on the inspection roster that the City Sheriff reasonably believes pose an imminent threat to public health, safety, and welfare, as determined in accordance with subdivision e of this section, or where the City Sheriff reasonably believes that conduct in violation of Chapter 5-A of Title 7 of the Administrative Code has continued after an initial investigation; and

(c) in furtherance of the efficient use of enforcement resources, the City Sheriff may inspect any place of business included on the inspection roster that is within a reasonable vicinity of a place of business otherwise scheduled for inspection.

3. The City Sheriff will create an inspection roster, which may be subdivided based on two or more discrete geographic zones, and include on such roster each place of business at which the City Sheriff reasonably believes cannabis is sold or offered to be sold, provided that no place of business shall be included on such roster for which a registration, license, or permit has been issued pursuant to the Cannabis Law or that is otherwise listed in the directory maintained by the New York State Office of Cannabis Management pursuant to subdivision 13 of section 11 of the Cannabis Law. Such reasonable belief may be established based on:

(a) observations of places of business by law enforcement officers or other agency

representatives;

(b) complaints received in accordance with a procedure developed by the City Sheriff, provided such complaints are subsequently substantiated by the City Sheriff; or

(c) signage, statements and advertisements associated with a place of business.

4. Records of each inspection shall be maintained by the City Sheriff.

5. Inspections authorized by section 7-552 of the Administrative Code shall only occur during the operating hours of a place of business.

6. Inspections may be conducted pursuant to this subdivision in both the public and non-public portions of a place of business.

7. The provisions of this section shall neither be interpreted to limit any law enforcement officer from conducting law enforcement activity, including but not limited to issuing summonses pursuant to subdivision c of this section or orders pursuant to section 7-552 of the Administrative Code, with respect to the portion of the place of business that is open to the public nor be interpreted to limit any enforcement activity authorized under law when illegal activity is observed or occurs during an inspection conducted pursuant to this subdivision. The provisions of this section shall not be interpreted to limit any agency's authority to conduct inspections for any purpose where such inspections are authorized pursuant to a provision of law or rule other than subdivision a of section 7-552 of the Administrative Code.

8. The City Sheriff will consider all relevant available information in determining whether to remove a place of business from the inspection roster developed pursuant to this subdivision.

c. Penalty schedule. 1. The penalty schedule applicable to violations of section 7-551 of the Administrative Code shall be as follows:

<u>Citation</u>	<u>Violation Description</u>	<u>Violation Penalty</u>	<u>Violation Default Penalty</u>
<u>Administrative Code § 7-551(a)</u>	<u>Any violation of subdivision a of section 7-551 by a place of business</u>	<u>\$10,000</u>	<u>\$10,000</u>
<u>Administrative Code § 7-551(a)</u>	<u>Any violation of subdivision a of section 7-551 by an individual owner of a place of business</u>	<u>\$10,000</u>	<u>\$10,000</u>

2. Each day in which the conduct described in the schedule included in paragraph 1 of this subdivision occurs or continues to occur shall constitute a distinct violation and be subject to penalty pursuant to such schedule.

3. Penalties imposed pursuant to each civil summons issued pursuant to this section shall be in addition to, and shall not be offset or modified by, any fines or penalties imposed pursuant to any other provision of law or rule, penalties imposed pursuant to other civil summonses issued pursuant to this section or any other remedies sought by the City. Notwithstanding any other provision of this subdivision, where the City Sheriff issues multiple violations of section 7-551 of the Administrative Code to a person or place of business pursuant to this subdivision for conduct occurring over multiple days and such violations are issued pursuant to a single civil summons, the cumulative penalties that may be imposed pursuant to such single civil summons shall not exceed \$25,000.

d. Designation. 1. Personnel of agencies of the City may be designated to exercise powers authorized under Chapter 5-A of Title 7 of the Administrative Code in accordance with subdivision e of section 7-552 of the Administrative Code, provided that the City Sheriff designates such personnel in writing and posts such designation on the website of the Department of Finance.

2. Notwithstanding any other provision of this section, any personnel designated pursuant to this subdivision shall have all the powers of the City Sheriff described in this section and Chapter 5-A of Title 7 of the Administrative Code, subject to terms of such designation.

3. The City Sheriff may revoke any designation made pursuant to this subdivision in whole or in part, provided that the City Sheriff revokes such designation in writing and posts such revocation on the website of the Department of Finance.

e. Imminent threats to public health, safety, and welfare. 1. In determining whether conduct poses an imminent threat to public health, safety, and welfare, the City Sheriff will consider the totality of the factors set forth in subdivision 4 of section 138-b of the Cannabis Law, provided that any factor specified in such subdivision 4 shall be sufficient on its own to determine an imminent threat.

2. For the purposes of paragraph e of subdivision 4 of section 138-b of the Cannabis Law and paragraph 2 of subdivision b of section 7-552 of the Administrative Code, a place of business at which conduct prohibited by subdivision a of section 7-551 of the Administrative Code occurs shall be considered proximate to a school, house of worship, or public youth facility if such place of business is temporarily or permanently located within 1000 feet of such school, house of worship or public youth facility.

3. Distances measured pursuant to this subdivision shall be determined based on a straight line from the center of the nearest entrance of a place of business to the center of the nearest entrance of a school, public youth facility, or house of worship, as applicable, provided that:

(a) where a place of business is a vehicle, any point on such vehicle may be a basis for measurement; and

(b) where a school, public youth facility or house of worship, as applicable, has no physical entrance, the nearest boundary of such school, public youth facility or house of worship may be a basis for such measurement.

f. Seizure and destruction of cannabis and other related items. In each instance in which the City Sheriff seizes cannabis or other related items found in the possession of a person engaged in a violation of subdivision a of section 7-551 of the Administrative Code, including but not limited to seizures resulting from inspections conducted pursuant to subdivision b of this section, the City Sheriff shall:

1. serve a summary of cannabis and other related items seized at such place of business and a tracking number associated with such items in the same manner as an order issued pursuant to subdivision g of section 7-552 of the Administrative Code, provided that the City Sheriff is not required to post any such summary or such tracking number at such place of business, and only such tracking number is required to be included in any mailing made pursuant to this paragraph; and

2. store such cannabis and other related items in a secure location pursuant to a cataloging system determined by the City Sheriff or a designee of the City Sheriff, subject to the provisions of subdivision g of this section.

g. Rights to challenge seizure and orders to cease prohibited conduct. 1. No later than 20 business days after issuance of the earliest notice issued pursuant to paragraph 1 of subdivision f of this section, an individual may petition in writing to the address, email address, or by using the applicable electronic form referenced on such summary or mailing, as applicable, to challenge the seizure of cannabis or other related items and may provide reasons that such cannabis or other related items were neither offered for sale in violation of subdivision a of section 7-551 of the Administrative Code, nor used as instrumentalities in furtherance of a violation of such subdivision.

2. No later than 20 business days after issuance of an order to cease prohibited conduct pursuant to paragraph 1 of subdivision b of section 7-552 of the Administrative Code, an individual may petition in writing to the address, email address, or by using the applicable electronic form referenced on such order to challenge such order.

3. The City Sheriff will respond in writing rejecting or accepting any petition made pursuant to either paragraph 1 or paragraph 2 of this subdivision no later than 10 business days of receipt of such petition. Any order to cease prohibited conduct pursuant to paragraph 1 of subdivision b of section 7-552 of the Administrative Code shall remain in effect and all cannabis and other related items seized will be retained during the period preceding such response.

4. The City Sheriff may destroy any seized cannabis or other related items 20 business days after:

(a) issuance of the earliest notice pursuant to paragraph 1 of subdivision f of this section, if no individual makes a petition within the timeframe required by paragraph 1 of this subdivision; or

(b) issuance of a notice pursuant to paragraph 3 of this subdivision rejecting in whole or in part, as applicable, a petition made pursuant to paragraph 1 of this subdivision.

5. This subdivision shall only apply to seizures made pursuant to Chapter 5-A of Title 7 of the Administrative Code and shall not apply to a seizure made pursuant to any other provision of law, including but not limited to the seizure of tobacco, electronic cigarettes, or any item that is a controlled substance pursuant to state law.

6. Notwithstanding any other provision of this subdivision, the City Sheriff will not return cannabis or other related items that have been seized where the return of such seized cannabis or other related items would be a violation of, or would facilitate the violation of, any applicable law.

h. Procedures following issuance of a sealing order.

1. Duration of order. A sealing order issued pursuant to Chapter 5-A of Title 7 of the Administrative Code shall be effective for one year from the date of the posting of the order.

2. Vacatur of a sealing order upon request by a property owner that is not the respondent.

(a) A property owner of a premises at which a sealing order has been issued pursuant to Chapter 5-A of Title 7 of the Administrative Code, other than the respondent, may petition the City Sheriff in writing to request that the City Sheriff vacate such order.

(b) A property owner requesting such a vacatur must provide sufficient proof, including an affidavit executed by each co-owner of the property and the attorney submitting such affidavit for the property owner, if applicable, and any additional documents requested by the City Sheriff, which may include a copy of a lease with a subsequent tenant and photographic evidence. Such affidavits and additional documents must demonstrate that the respondent has vacated the premises and that the conduct in violation of Chapter 5-A of Title 7 of the Administrative Code has ceased. Where the property owner seeks a vacatur of the sealing order and the respondent has not vacated the premises, the procedures set forth in paragraph (3) of this subdivision for vacatur of a sealing order upon request of a respondent shall apply.

(c) In making a determination of whether to vacate a sealing order pursuant to a petition by a property owner, the City Sheriff will consider the reliability and completeness of the documentation submitted to the City Sheriff and whether such documentation demonstrates (i) that the tenant has vacated the premises and (ii) that the conduct in violation of Chapter 5-A of Title 7 of the Administrative Code has credibly ceased following the sealing of the property.

3. Vacatur of a sealing order upon request by a respondent.

(a) A respondent subject to a sealing order issued pursuant to Chapter 5-A of Title 7 of the Administrative Code may petition the City Sheriff in writing to request that the City Sheriff vacate such order.

(b) A respondent requesting such a vacatur must provide sufficient proof, including an affidavit executed by each co-owner of the respondent and the attorney submitting such affidavit for the respondent, if applicable, demonstrating that conduct in violation of Chapter 5-A of Title 7 of the Administrative Code at the premises has been abated. A respondent must attach to such affidavit:

(1) a business plan detailing the respondent's intended use of the property following vacatur of the sealing order that includes: (i) documentation illustrating the actions that the respondent has taken in furtherance of implementing such business plan; and (ii) financial estimates of the revenue that will be generated through such business plan;

(2) proof that the respondent has submitted a verified statement setting forth the information specified in subdivision 5 of section 17 of the cannabis law;

(3) documentation indicating: (i) whether the respondent has the right to occupy the premises, as demonstrated by an affidavit or other representation from the property owner that the respondent lawfully occupies the premises or a detailed explanation regarding why the respondent is unable to obtain such affidavit or representation; and (ii) the term of the respondent's lease or right to occupy the property, as applicable;

(4) documentation indicating that the respondent consents to reinspection pursuant to subdivision 9 of section 138-b of the Cannabis Law and will maintain or arrange for the maintenance of sufficient financial records on the premises or otherwise provide access to such financial records to the City Sheriff such that the City Sheriff can review the respondent's business activity in furtherance of such reinspection;

(5) documentation regarding any business activity relating to the sale of cannabis conducted by the respondent, and any person who owns 10 percent or more of the voting stock or shares of such respondent, at any other location; and

(6) documentation indicating that all signage and all other marketing materials indicating an intent to sell illicit cannabis, including but not limited to such signage and marketing materials located on the premises and marketing materials featured on internet webpages associated with the respondent, have been removed.

(c) In determining whether to vacate a sealing order pursuant to a petition by a respondent, the City Sheriff will consider factors including but not limited to:

(1) the reliability and completeness of the documentation submitted to the City Sheriff;

(2) the degree to which, following the sealing, conduct in violation of Chapter 5-A of Title 7 of the Administrative Code has abated, including but not limited to whether the respondent continues to be engaged in unlicensed cannabis activities at other properties; and

(3) the threat to public health, safety, and welfare posed by the respondent based on such respondent's previous conduct.

4. Notice. Except as otherwise provided by paragraph 5 of this subdivision, the City Sheriff will respond in writing notifying a property owner or respondent, as applicable, of the City Sheriff's determination regarding the sealing order no later than 30 business days after receipt of any petition made pursuant to this subdivision. Such response will state whether the order to seal has been vacated, whether the order to seal has been held to continue, or whether additional documents are required to render a determination. Where the City Sheriff determines that additional documents are required, such 30 business day period shall be deemed to begin upon receipt of the additional submission.

5. The City Sheriff will not consider any petition to vacate a sealing order submitted pursuant to paragraph 3 of this subdivision while any administrative proceeding relating such sealing order remains pending.

i. Notice addresses. Any response by the City Sheriff pursuant to paragraph 3 of subdivision g of this section, or paragraph 4 of subdivision h of this section, and any notice of a determination with respect to continuation of an order to seal pursuant to paragraph 2 of subdivision b of section 7-552 of the Administrative Code will be mailed to the address provided by the petitioner or respondent, as applicable, or if no such address is provided, to the address provided pursuant to subdivision g of section 7-552 of the Administrative Code.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rules Related to Unlicensed Businesses Selling Cannabis (Permanent Rule)

REFERENCE NUMBER: DOF-68

RULEMAKING AGENCY: Department of Finance

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and

- (iii) Does not provide a cure period because violations pose a significant risk to public health or safety.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 24, 2024
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Rules Related to Unlicensed Businesses Selling Cannabis (Permanent Rule)

REFERENCE NUMBER: 2024 RG 056

RULEMAKING AGENCY: New York City Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 22, 2024