

New York City Department of Finance

Notice of Adoption

Pursuant to the authority vested in the New York City Department of Finance (“DOF”) in accordance with sections 1043(a), and 1504 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), DOF is adopting a rule to establish a regulatory framework for the City Sheriff to conduct administrative inspections of businesses engaged in illicit cannabis activity; to specify the civil penalties for violations of Administrative Code Section 7-551; to establish how the City Sheriff may designate personnel of other City agencies to conduct enforcement efforts; to outline the circumstances in which the Sheriff may seal a place of business; and to detail other mechanisms necessary to achieve a comprehensive enforcement of unlicensed cannabis activity. This rule is a continuation of the rule adopted on an emergency basis and published in the May 7, 2024 issue of the City Record in accordance with Section 1043(i) of the City Charter. Pursuant to such section, a proposed permanent version of these rules was published on June 27, 2024. A hearing for public comment was held on July 31, 2024. This rule will take effect immediately pursuant to a determination made pursuant to Section 1043(f)(1)(d) of the City Charter.

Statement of Basis and Purpose

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 (“DOF”). 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 or 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, DOF 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, among other reasons. Before the emergency rule was implemented, The Office of the City Sheriff estimated that 2,800 unlicensed cannabis retailers were operating within its borders, and despite the effectiveness of the emergency rule, most of those retail stores continue to operate. Since the implementation of the

emergency rule, the public has submitted additional complaints regarding unlicensed retail stores, which resulted in an updated estimate of 3,600 unlicensed cannabis retail stores operating within the City's borders. 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.

The emergency rule was scheduled to expire on July 1, 2024; however, on June 27, 2024, this permanent rule was proposed and published in the City Record, and extended the effectiveness of the emergency rule pursuant to Charter section 1043(i). On July 31, 2024, DOF held a public hearing on the proposed rule.

DOF received both written comments via email and through the NYC Rules web-portal, as well as oral comments delivered at the July 31, 2024 public hearing. Commentators were largely supportive of the goals motivating this rulemaking. Commenters, including New York City Public Advocate Jumaane Williams and New York City Council Member Carlina Rivera, commended the efforts of the City Sheriff to enforce the law against illicit cannabis stores and facilitate the growth of legal cannabis businesses, contrasting this administrative enforcement scheme with historic efforts that focused on criminal enforcement. Public Advocate Williams also emphasized the importance of protecting civil liberties in the implementation of this rule. Representatives of Community Board 5 in Manhattan expressed support for goals behind this regulation, as well. Several commentors noted that illicit commercial cannabis operations harm the social equity aims of the New York Cannabis Law and have a negative effect on the legacy business community that the legalization of cannabis intended to uplift.

Some commentors focused on the operational practices of cannabis inspections, speculating on the adaptive business practices of illegal cannabis operations and opining on the range of potential law enforcement responses to this illegal conduct. These comments, though relevant to the Padlock-to-Protect program overall, generally did not relate to the administrative policies established in this rule, but related to granular and site-specific inspection tactics. Other commentators offered recommendations regarding the siting of legal cannabis retailers, which is outside the scope of DOF's regulatory authority. Several commentators expressed concern regarding the uniformity of application of this regulation. The City Sheriff is committed to inspecting illegal retailers pursuant to the administrative inspection framework set forth in these rules and Chapter 5-A of Title 7 of the Administrative Code without prejudice or favoritism, in order to address the detrimental effects of illicit cannabis on New Yorkers' health and safety.

One commenter inquired as to how the City Sheriff estimates the number of currently operating illicit stores, cited above. DOF is committed to closing as many illicit stores as possible to protect City residents from the various harms of illegal cannabis, and the Sheriff uses a variety of data sources to evaluate the illegal market for cannabis.

Similar to the May 2, 2024 emergency rule, this permanent rule implements various elements of the statutory framework contained within Chapter 5-A of Title 7 of the Administrative Code by

establishing 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. This rule establishes a regulatory framework for the City Sheriff to conduct administrative inspections; specifies the civil penalties for violations of Administrative Code 7-551; establishes how the City Sheriff may designate personnel of other City agencies to conduct enforcement efforts; outlines the circumstances in which the Sheriff may seal a place of business; and details other mechanisms necessary to achieve comprehensive enforcement of unlicensed cannabis activity.

Subdivision a of section 42-04 of this rule defines the terms "cannabis," "City Sheriff," "place of business," "property owner," "public youth facility," and "school," which apply throughout section 42-04. Multiple commenters, including Community Board 5 in Manhattan, proposed expansions to several defined terms, including "public youth facility" and "school," and pressed for a broad interpretation of the term "house of worship" in the context of the statutory framework of Chapter 5-A. After carefully considering these recommendations, DOF chose to craft these definitions in a manner that maintains substantial harmony with corresponding state law and regulations, and elected not to include a definition of the term "house of worship."

Subdivision b of section 42-04 establishes a framework for the City Sheriff to conduct administrative searches pursuant to Administrative Code section 7-552(a). Specifically, subdivision b elaborates on the statutory civil administrative enforcement framework by authorizing the City Sheriff to establish a schedule of inspections based on an inspection roster. One commenter expressed concerns at the public hearing regarding how the roster is assembled. Pursuant to this rule, the roster is compiled by the City Sheriff, and the places of business listed on it are 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 authorized by this rule carries over the existing roster document established under the May 2, 2024 emergency rule. The purpose of the 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, where illegal conduct has been confirmed to be occurring, or where a store included on the roster is operating proximate to retail store listed in the New York State Office of Cannabis Management's directory as licensed or registered to sell cannabis. To promote the efficient use of enforcement resources, the City Sheriff is 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.

Subdivision b of section 42-04 also clarifies 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 does 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. Community Board 9 in Manhattan expressed enthusiasm for greater community involvement in targeting illegal smoke-shop locations. This subdivision provides that

community complaints are an explicit basis for including a suspected smoke-shop onto the roster.

Subdivision c of this section establishes 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 (which includes, among other things, keeping for the purposes of sale) 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 are 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, is 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, results in a \$10,000 default penalty. A commenter submitted a written comment urging DOF to consider how to enforce the law against cannabis vendors for whom issuance of an order to seal would not be the most effective enforcement mechanism, such as sidewalk or vehicle-based vendors. This subdivision addresses that concern directly by authorizing the Sheriff's Office to issue civil penalties against those illegally selling cannabis. Community Board 5 in Manhattan expressed the view that Community Boards should have the opportunity to testify at proceedings relating to civil summonses before the Office of Administrative Trials and Hearings ("OATH"). While community input is a critical component of government, DOF regulations do not govern the procedural rules of OATH hearings.

Penalties imposed pursuant to each civil summons are in addition to, and are not offset or 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, are independent of and in addition to the penalties set forth in subdivision c. The City Sheriff is authorized to issue multiple violations pursuant to this 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 are not authorized to exceed \$25,000. The \$25,000 cumulative maximum penalty does not apply across multiple civil summonses issued to the same respondent.

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 must designate such personnel in writing and post such designation on the website of DOF. Subdivision d also allows for the revocation of designations through a similar process. During the public hearing, commenters raised the issue of the training of officers who engage in enforcement actions. DOF agrees that it is imperative that officers are trained properly so as to best protect and serve communities. Officers involved in cannabis enforcement are given extensive training by the City Sheriff and are well-versed in best practices that protect the safety of City residents. For this reason, DOF has determined that no amendment to this rule was necessary. Another commenter submitted a written comment urging the City to expand the number of entities involved in cannabis enforcement. This subdivision, which was

included in both the May 2, 2024 emergency rule and the proposed rule, authorizes the City Sheriff to take such action, and expand the agencies involved in illicit cannabis enforcement as necessary.

Subdivision e of section 42-04 establishes 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. In the public hearing, a commenter raised concerns over how businesses are classified by officers as posing an “imminent threat” to the community. Cannabis Law Section 138-b(4) establishes a list of factors that may result in a finding of an imminent threat. 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 provides that a single factor is sufficient to give rise to that determination.

During the public hearing, one commenter urged DOF to prioritize enforcement against stores located in close proximity to houses of worship. In addition, a commenter expressed concern regarding teenagers becoming dependent on cannabis products if illicit cannabis stores are allowed to operate in close proximity to schools. This subdivision addresses these concerns directly by clarifying what constitutes proximity to a place of worship, a school or a public youth facility for the purpose of this rule and allowing for the Sheriff to efficiently and fairly find that an illicit store poses an imminent threat if it is located in close proximity to one of these facilities. One commenter suggested that targeting proximity to houses of worship could conflict with certain individuals’ religious practices; however, the policy of deeming proximity to houses of worship to be an imminent threat was established by State Law and is important tool for protecting communities in the City.

The standards for determining proximity set forth in this rule 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 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 rule are determined to be appropriate considering the illegal nature of the businesses and conduct subject to this rule. The greater distances included in this 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.

Several additional comments relating to this subdivision could not be fully addressed in this final rule. Representatives of Community Board 9 in Manhattan suggested that proximity to residences and harm reduction facilities should also be treated as a basis for an imminent threat; however, such a policy is not authorized under Administrative Code Section 7-552 and Cannabis Law Section 138-b. Community Board 9 also suggested that measurements for determining proximity to a facility be determined by walking distance, as opposed to a straight-line measurement. Given the potential impracticality and potential ambiguities of measuring walking distance, DOF did not adopt this recommendation. Another commenter who testified at the public hearing expressed concern about the health and safety effects of the cannabis that is permitted to be sold in New York State. While the standards for testing and labeling cannabis are established by the State and outside the scope of DOF’s rulemaking authority, this rule allows for stores that sell untested

cannabis to the public to be deemed an imminent threat for the purpose of the enforcement framework set forth in Chapter 5-A of Title 7 of the Administrative Code .

Subdivision f of section 42-04 of this rule sets 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 subdivision also establishes requirements for the storage and cataloging of seized cannabis and other items.

Subdivision g of section 42-04 provides 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 is a violation of, or facilitates the violation of, any applicable law.

Subdivision h of section 42-04 establishes the procedures applicable to properties for which a sealing order is in place or for which a sealing order has been ordered to continue under Administrative Code section 7-552(b)(2). Multiple commenters, both during the public hearing and through written comments, raised the question of how a property owner may unseal a property after it has been sealed by the City Sheriff. 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 Cannabis Law Section 138-b(9) and (11). 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, and the final version of this rule also includes language designed to ensure that the City Sheriff has adequate flexibility to review such petitions. A commenter submitted a written comment urging DOF to modify this provision to require the Sheriff's Office to provide a reason for denying a petition to unseal. The final rule reflects this feedback and includes this requirement.

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 includes a process to determine the appropriate address to which correspondence must be mailed in subdivision h of section 42-04.

This rule will take effect immediately pursuant to a determination made pursuant to Section 1043(f)(1)(d) of the City Charter and replace the May 2, 2024 emergency rule.

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 will 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;

(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 to a place of business otherwise scheduled for inspection; and

(d) the City Sheriff may prioritize inspections of places of business included on the inspection roster that are within 1000 feet, as measured based on the methodology set forth in paragraph (3) of subdivision e of this section, from places of business for which a registration, license, or permit has been issued pursuant to the Cannabis Law or that are 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; and

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 will 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 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 will:

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 as to 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.

(d) Notwithstanding any other provision of this section, the City Sheriff may, on a temporary basis and upon request, grant access to a premises notwithstanding a sealing order for the limited purpose of removing physical signage and all other marketing materials indicating an intent to sell illicit cannabis, or for otherwise ensuring that the premises will not be used for unlawful activity, where such request is made in connection with a petition pursuant to this paragraph that the City Sheriff determines contains sufficient proof in other respects separate and apart from the proof necessary for clause (6) of subparagraph (b) of this paragraph.

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 within a reasonably practicable period 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 responds to a petition with the determination that an order to seal shall continue, the City Sheriff shall state in writing its reasoning for denying the petition.

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 to 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.

**FINDING OF SUBSTANTIAL NEED FOR EARLIER
IMPLEMENTATION**

I hereby find and represent to the Mayor that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of a New York City Department of Department of Finance rule to establish a regulatory framework for the City Sheriff to conduct administrative inspections; to specify the civil penalties for violations of New York City Administrative Code Section 7-551; to establish how the City Sheriff may designate personnel of other City agencies to conduct enforcement efforts; to outline the circumstances in which the Sheriff may seal a place of business; and to detail other mechanisms necessary to achieve a comprehensive enforcement of unlicensed cannabis activity. This rule is necessary address an imminent threat to the health and safety of New Yorkers.

This rule amendment to Chapter 42 of Title 19 of the Rules of the City of New York is necessary to regulate the proliferation of unlicensed cannabis retail stores across the City. Unlicensed retail stores pose a risk to the public by selling unregulated cannabis products that have the potential to cause physical illness to consumers. Many of the retail stores are located proximate to schools and public youth facilities and sell cannabis products in packaging displaying cartoon characters and bright colors. These unlicensed cannabis retailers operate in flagrant violation of the law and undermine the statutory framework of licensure and permit issuance established under the Cannabis Law. Delaying implementation of this rule would foreseeably impair the quality of life for New Yorkers who currently endure the effects of this illegal industry and permit the imminent threat posed by this industry to continue at an unacceptable level.

Therefore, I find pursuant to Charter Section 1043(f)(1)(d) that there is a substantial need for this rule's earlier implementation.

/s/
Anthony Miranda, City Sheriff
New York City Department of Finance

/s/
Preston Niblack, Commissioner
New York City Department of Finance

APPROVED:

/s/
Eric Adams
Mayor