

## DEPARTMENT OF FINANCE

### **Notice of Adoption of Rules Pursuant to the Emergency Procedures of Section 1043(i)(1) of the New York City Charter**

Pursuant to the emergency procedures set forth in section 1043(i) of the New York City Charter (“Charter”) and pursuant to the rulemaking authority granted to the New York City Department of Finance (“DOF”) by Charter sections 1043 and 1503, as well as the authority granted by 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), the City Sheriff, by and through DOF, adopts the following emergency rule relating to searches of places of business selling cannabis where no registration, license, or permit has been issued pursuant to the New York State Cannabis Law, the imposition of penalties against such businesses selling cannabis, and the sealing of such businesses. This rule will take effect immediately.

#### **Statement of Basis and Purpose of Emergency 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, 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, 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. This rule implements various elements of this statutory framework by adding a new section 42-04 to Title 19 of the Rules of the City of New York, entitled Sheriff’s Enforcement of Unlicensed Cannabis Activity.

Currently, the City estimates that 2,800 unlicensed cannabis retailers are operating within 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 State Cannabis Law. To curtail the operation and growth of this illegal industry, the Department of Finance is immediately promulgating these rules to implement the regulatory scheme authorized by Chapter 5-A of Title 7 of the Administrative Code.

Subdivision a of section 42-04 of this rule provides definitions for the terms “cannabis,” “City Sheriff,” “place of business,” “public youth facility,” and “school,” which apply throughout section 42-04.

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 a roster. Such roster shall be compiled by the City Sheriff and places of business listed on it will be based on observations by law enforcement officers, statements made, signage, and advertising materials associated with a place of business, and complaints received by the City Sheriff. 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, or where illegal conduct has been confirmed to be occurring. To promote 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. This roster may be subdivided into two or more geographic zones for the purposes of organizing investigation activity to further the efficiency of the City Sheriff’s efforts.

Subdivision b of section 42-04 also clarifies that the intent that the City Sheriff is authorized to conduct these inspections within both the public or 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.

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 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 or are principally responsible for the operation of 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 or is principally responsible for the operation of the place of business, as applicable, will 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, will result in a \$10,000 default penalty.

Penalties imposed pursuant to each civil summons are additional 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 in this subdivision c. The City Sheriff may 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 cannot 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). In order to provide adequate public notice, this subdivision provides that the City Sheriff will designate such personnel in writing and post such designation on the website of the Department of Finance. This subdivision d also allows for the revocation of designations through a similar process.

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. Cannabis Law § 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, but provides that a single factor shall be sufficient to give rise to that determination. This subdivision also clarifies what constitutes proximity to a place of worship, a school or a public youth facility for the purpose of this rule. These standards for determining proximity are reasonable in light of 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 were determined to be appropriate in light of the illegal nature of the businesses 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.

Subdivision f of section 42-02 of this rule provides the procedure for the Sheriff to provide tracking information and broad categorical lists 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). 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), this rule includes a process to determine the appropriate address to which

correspondence must be mailed in 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.

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 shall 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 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 shall 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 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 shall 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, as appropriate, 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 list 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 list 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.

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 or electronic address included on such list or mailing, as applicable, for the return of the cannabis or other related items seized 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 or email address included on such order challenging such order.

3. The City Sheriff shall 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 shall 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.

h. Notice addresses. Any response by the City Sheriff pursuant to paragraph 3 of subdivision g 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 shall 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.

**Required Finding Pursuant to New York City Charter Section 1043(i)(1)**

IT IS HEREBY CERTIFIED that the immediate effectiveness of this emergency rule, which implements the City Sheriff's authority relating to searches of businesses selling cannabis where no registration, license, or permit has been issued pursuant to the New York State Cannabis Law,

the imposition of penalties against such businesses selling cannabis, the sealing of such businesses, and related orders and seizures, is necessary to aid the City of New York in responding to safety complaints from New Yorkers, and thereby to address an imminent threat to the health and safety of New Yorkers.

This emergency rule is necessary to immediately regulate the spread of unlicensed cannabis retail stores across the City. Currently, the City estimates that 2,800 unlicensed cannabis retailers are operating within 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. To curtail the operation and growth of this illegal industry, the Department of Finance (DOF) is immediately promulgating these rules to implement the regulatory framework authorized by Administrative Code Title 7, Chapter 5-A.

Delaying implementation of this rule pending non-emergency rulemaking 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.

Pursuant to section 1043(i)(2) of the New York City Charter, the emergency rule will remain in effect for not more than 120 days while the DOF prepares a permanent rule.

May 2, 2024

\_\_\_\_\_/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