
CITY OF BELEN
ORDINANCE 2022- 22

Title 5
BUSINESS LICENSES AND REGULATIONS

5.04.010 License required.

It shall be unlawful for any person to engage in the following businesses, professions, or trades, as defined in Sections 5.04.010 and 5.04.020 of this chapter, within the corporate limits of the City of Belen without first obtaining a license as resolved herein and pursuant to Section 3-38-1, NMSA 1978, as amended.

5.04.020 Types of businesses and fees.

Before conducting, operating, or engaging in any such business, trade, or occupation within the corporate limits of the City of Belen, every business shall pay, in advance, for each location, the respective amounts hereinafter set forth:

Contractors, per annum	\$35.00
Itinerant peddlers and street vendors, per day	\$25.00
Concerts and traveling exhibitions, shows of any kind or description exhibited or given in any public hall, under tents, or any other place within the town, and all public exhibitions or amusements of any nature or any kind whatsoever done for private gain, other than licensed theaters, bona fide labor organization meetings, and exhibits sponsored by non-profit, religious, civic, charitable or patriotic organizations, per day	\$250.00
Fortune tellers, palmists, phrenologists, and like services and businesses, per day	\$25.00
Public auctions, per day	\$25.00
Public dances, for private gain, , per day	\$25.00

5.04.030 Solicitors.

Itinerant solicitors soliciting applications for the sale of real estate, sales of clothing, merchandise, magazines, equipment, and photographic services or other photographic articles, and who do not maintain a regular place of business within the city limits shall pay a fee at the rate of twenty-five dollars (\$25.00) per day per person and, in addition thereto and prior to engaging in such soliciting, they shall provide and furnish a bond in the sum of one thousand dollars (\$1,000.00) to the City of Belen for the use and benefit of any person who may suffer damages growing out of any transaction had with such solicitor, to be recovered by action in the district court in the name of the person suffering such damage, together with attorney's fees as may be allowed by the court, such bond to be in full force and effect for the period of one year after the date of its execution and delivery.

5.04.040 Application.

Applicants for a license under this chapter must file with the clerk a sworn application in writing on a form to be furnished by the clerk which shall include, but is limited, to the following information:

- A. Name;
- B. Address;
- C. Current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number; and a copy of EIN Federal number documents.
- D. Proof of insurance coverage, where applicable.
- E. A brief description of the nature of the business.
- F. Proof of bond, when applicable.

5.04.050 Business license fees assessment and issuance of license.

- A. On or before January 31st of this year, and all subsequent years, all businesses engaging in a type of business, as set forth in Sections 5.04.020 and 5.04.030 of this chapter as well as other pertinent sections, shall apply for a business license for that year and include Application, supporting documents and fire inspection documents (when applicable).
- B. Upon payment of the business license fee, the City Clerk shall issue a business license to the applicant.
- C. Any business which must have a business license per this chapter and which begins operation after January 31st of the calendar year, shall apply to the City Clerk for a business license prior to engaging in business. The amount of the license fee shall not be prorated, except as provided in this chapter.
- D. Any business may protest the business license fee assessment by filing a written protest with the City Manager. The City Council shall give the protesting business no less than five days notice of the hearing, at which time the protest shall be heard by the City Council.

The City Council of the City of Belen shall refuse to issue a business license when it deems such refusal to be in the best interests of the public. Any person making an application for a business license who is refused a business license may protest such refusal by filing a written protest with the City. The City Council shall give the protesting business no less than five days' notice of a hearing, at which time the protest shall be heard by the council.

In any case where a person, firm, or corporation has been granted a business license and has subsequently been judged guilty of violating this chapter or any ordinance in relation thereto, or whenever, in the judgment of the City Council the public welfare shall require a license to be revoked as outlined in NMSA section 3-38-2.

There is hereby created a lien on the personal property of each business licensed; such lien is in favor of the City and enforced pursuant to Section 3-38-6 NMSA 1978.

5.04.060 Violation—Penalty.

Any business which violates this chapter or fails to comply with any of its requirements shall be subject to a penalty of a fine to be not less than ten dollars nor more than three hundred dollars (\$300.00) or by imprisonment

for a period not more than ninety (90) days, or both. Each day this chapter is violated shall constitute a separate offense.

The municipality may also initiate collection and enforcement procedures as outlined in Sections 3-38-5 and 3-38-6, NMSA 2021.

Chapter 5.08 BUSINESS REGISTRATION FEES

5.08.010 Fee imposed.

Pursuant to Section 3-38-3 NMSA (1978, as amended), the business registration fee shall be thirty-five dollars (\$35.00) a year, and may not be prorated for businesses conducted for a portion of the year.

5.08.020 Exemptions.

No business registration fee shall be imposed on any business which is licensed under Ordinance No. 1981-11 and any and all ordinances which impose a business license fee pursuant to Section 3-38-1 NMSA (1978). (Amended during 1998 codification; Ord. 1981-10 § 2)

5.08.030 Application to do business.

Any person proposing to engage in business within the municipal limits of the City of Belen after July 1, 1981, shall apply for and pay a business registration fee for each outlet, branch or location within the municipal limits of the City of Belen prior to engaging in business, unless such person is required to pay a business license fee under Ordinance No. 1981-11 and any and all ordinances which impose a business license fee pursuant to Section 3-38-1 NMSA (1978). (Amended during 1998 codification; Ord. 1981-10 § 3)

5.08.040 Renewal.

Prior to January 31st, of each year, any person with a place of business in the City of Belen and subject to this chapter shall apply for renewal of business registration with the City Clerk.

5.08.050 Application.

Any person filing an application for issuance or renewal of any business registration shall include in the application a copy of the current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number and a copy of EIN Federal number document as well as tax identification number(s) from New Mexico Taxation and Revenue Department if applicable.

5.08.060 Late fee for nonpayment of business registration fee.

Pursuant to Section 3-38-5 NMSA (1978 as amended), there shall be a late fee of ten dollars per year due from any business not registered in a timely manner as provided in Section 5.08.040 of this chapter.

Chapter 5.12 ADULT ENTERTAINMENT FACILITIES

5.12.010 Purpose.

In adopting this chapter, it is recognized that certain types of adult entertainment facilities possess certain objectionable operational characteristics which, when concentrated, can have a deleterious effect upon adjacent areas. It is also recognized that locating the adult entertainment facilities covered by this chapter in the vicinity of facilities frequented by minors will cause the exposure of minors to adult material which, because of their immaturity, may adversely affect them. In addition, it is recognized that many persons are offended by the public display of certain sexual material. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood and to an adverse effect on minors.

5.12.020 Definitions.

As used in this chapter, the following terms shall have the following meanings:

"Adult bookstore" means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are substantially devoted to the depiction of "specified sexual activities" or "specified anatomical areas."

"Adult motion picture Theater" means an enclosed building used for presenting material in the form of motion picture film, videotape or, other similar means which is substantially devoted to the depiction of "specified sexual activities" or "specified anatomical areas" for observation by persons therein.

"Adult news rack" means any coin-operated machine or device which dispenses material substantially devoted to the depiction of "specified sexual activities" or "specified anatomical areas."

"Specified anatomical areas" means:

1. Less than completely and opaquely covered;
 - a. Mature human genitals,
 - b. Mature human buttock,
 - c. Mature human female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" means:

- a. Human genitals in the state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy;
- c. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

5.12.030 Location of adult bookstores, movie theaters and news racks.

- A. No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any adult bookstore, adult movie theater or adult news rack in the following locations:
 1. Within one thousand three hundred twenty (1,320) feet of any parcel of real property on which is located any of the following facilities:

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- a. A school primarily attended by minors;
 - b. A church which conducts religious education classes for minors;
 - c. A public park, or public recreation facility;
 - d. A residential area; and
 - e. A business frequented by minors.

5.12.040 Public display of certain matter prohibited.

Materials offered for sale from adult news racks shall not be displayed or exhibited in a manner which exposes to public view any pictures or illustrations of adult human genitals or specified sexual activities in a manner which exposes said material to the view of persons outside the building in which said bookstores or motion picture theaters are located.

5.12.060 Violation—Penalty.

Notwithstanding any other provisions of this chapter, any person who violates this chapter shall be guilty of a misdemeanor and may be punished as follows:

- A. By imprisonment in the county jail not to exceed ninety (90) days; or
- B. A fine not exceeding three hundred dollars (\$300.00); or
- C. A combination of such imprisonment, forfeiture, and/or fine; provided, however, that in no event shall any fine imposed, when added to the reasonable value of any impounded news rack which is forfeited, exceed the sum of three hundred dollars (\$300.00).

Chapter 5.20 LIQUOR LICENSES

5.20.010 Definitions.

As used in this chapter:

"Club" means any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state, with a membership of not less than fifty (50) members who pay membership dues at the rate of not less than five dollars per year and who, under the constitution and by-laws of the club have all voting rights and full membership privileges, and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes.

"Department" means the Department of Alcoholic Beverage Control.

"Director" means the director of the department.

"Dispenser" means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages by the drink, for consumption, on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises.

"Governing body" means the mayor and elected city council members of an incorporated municipality.

"Person" means an individual, corporation, firm, partnership, co-partnership, association, or legal entity.

"Restaurant" means any establishment having a New Mexico resident as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided the "restaurant" does not include establishments defined in regulations promulgated by the director as serving only hamburgers, sandwiches, salads, and other fast foods.

"Retailer" means any person licensed under the provisions of the Liquor Control Act selling, offering for sale, or having in his possession with intent to sell, any alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises.

5.20.020 Imposition of liquor license tax.

- A. Pursuant to the provisions of Section 7-24-1, NMSA 1978, on or after the effective date of the ordinance codified in this chapter, no person who has been issued a state license from the department shall be given possession of the license by the municipality until the person has paid the municipal license tax as follows:
1. Payment in full by July 1st.
 2. The license tax shall be prorated so that licenses issued prior to October 1st of any year shall be subject to the full amount of the annual license tax. Licenses issued on or subsequent to October 1st and before January 1st shall be subject to three-fourths of the annual license tax. Licenses issued or on subsequent to January 1st and prior to April 1st of a year shall be subject to one-half of the annual license tax. Licenses issued on or subsequent to April 1st shall be subject to one-quarter of the annual license tax.

B. The tax rates shall be:

Type of License	Tax Amount
Retailer's license	\$250.00
Dispenser's license	\$250.00
Special dispenser's permit	\$10.00
Club license	\$250.00
Restaurant license	\$250.00

C. Persons granted a special dispenser's permit, under the provisions of Section 60-6A-12, NMSA 1978, shall pay to the municipality a fee of ten dollars per day for each day the permittee dispenses alcoholic beverages (picnic license).

5.20.030 Failure to pay tax.

Failure of any person holding a retailer's, dispenser's, canopy, club, or restaurant license, to pay tax on the date(s) and in the manner imposed by this chapter shall be subject to appropriate action by the governing body of the City of Belen, as provided by Section 7-24-3, NMSA 1978, relating to the closing of establishments.

5.20.040 Violation—Penalty.

Any person violating any of the provisions of this chapter shall be subject to punishment by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

Chapter 5.24 PAWNBROKERS AND SECONDHAND DEALERS

5.24.010 Receipt book required.

All persons operating junk yards, pawn shops, or secondhand stores in the City of Belen shall keep a receipt book upon which they shall enter every item of merchandise received or purchased by them, together with the date of such receipt or purchase, and the name and address of the person delivering such merchandise to them. They shall also inquire of every such person where such person obtained such merchandise and shall enter such information on their records.

The above record shall be open for inspection by the Belen police department at all reasonable times, and a copy of the entry made upon such record shall be delivered to the Belen police department at least once every thirty (30) days. Any person operating any junkyard, pawn shop, or secondhand store, and failing to comply with this chapter shall be fined in a sum not to exceed fifty dollars (\$50.00) or imprisonment in jail for a period not to exceed ten days or shall suffer both such fine and imprisonment.

An applicant for a license as a pawnbroker must be of good moral character and shall not have been convicted of any felony or crime involving moral turpitude. A license shall be denied to any applicant whose license was revoked for cause or who was a partner, officer, director, trustee, manager, or stockholder of any corporation or unincorporated association the license of which was revoked for cause.

Any application for license as a pawnbroker shall be referred to the police department for investigation as to the qualifications of the applicant and as to the truth of all statements in the application. In making their investigation, the police shall use current methods of police inquiry, including, without limitation, fingerprints, and photographs. The police shall, as soon as practical, make their report to the City Clerk who shall grant the license only if the report is favorable. The applicant may appeal a denial of his application to the governing body by the City.

Before a license can be granted, a person seeking a license as a pawnbroker must execute and deliver a bond to the City Clerk to be approved by the clerk in the penal sum of five thousand dollars (\$5,000.00) with a corporate surety authorized by the laws of the state to write surety bonds therein and conditioned for the conduct of such pawnbroker business according to the law and for the true and faithful observance of applicable provisions of the City ordinances pertaining thereto; such bond shall be for the benefit of the City and of every person damaged by breach of any condition thereof.

A pawnbroker's license may not be transferred to another location without the prior consent of the governing body. A license is not assignable or transferable to any other person. If the licensee sells, transfers, or assigns the business, the succeeding owner shall obtain a new license. Any change in the members of a partnership, ten percent (10%) or more of the membership of an association, or ten percent (10%) or more of the voting stock of a corporation holding a pawnbroker's license will constitute a change in ownership of the business.

Every junk dealer who, in addition to, or in connection with his junk business, carries on a regular secondhand business, or keeps in stock for retail any substantial quantity of new personal property for the sale of which either a license or an applicable tax is imposed shall, notwithstanding the license paid by him as a junk dealer, be subject to and shall pay the license fees or an applicable tax as is prescribed for the particular business so conducted.

Chapter 5.28 UNLICENSED CONTRACTORS

5.28.010 Intent.

Any person not licensed as a contractor or subcontractor in any building field by the City of Belen, hereinafter referred to as unlicensed contractor, may not obtain a permit from the City of Belen to perform or contract or subcontract for building or any job in connection with building, from the City of Belen. Any unlicensed contractor shall be guilty of a violation of this chapter and shall be liable to a fine not exceeding one hundred dollars (\$100.00), imprisonment for thirty (30) days, or both such fine and imprisonment, at the discretion of the municipal magistrate subject to the pertinent statutes, NMSA sections 60-13-1 through 59, and regulations prescribed by the New Mexico Construction Industries Division.

This section shall in no way be interpreted to conflict with or repeal any ordinance requiring a building permit.

Chapter 5.32 OUTDOOR SALES¹

5.32.010 Intent.

The purpose of this chapter is to establish minimal regulations concerning outdoor sales within the City of Belen.

5.32.020 Definitions.

"Estate, garage, or yard sale" means the sale of accumulated personal property on a residential-zoned lot.

"Moving sale" means the sale of accumulated personal property on a residential-zoned lot with the intent to permanently vacate the premises.

"Personal property" is property not owned by or under license to a business licensed by the City of Belen and not sold on the premises of the licensed business.

"Private outdoor market" means the outdoor sale of accumulated personal property on a commercial-zoned lot. Private outdoor markets may also be referred to as "flea markets" and "swap meets."

"Public outdoor market" means the outdoor sale of accumulated agricultural goods, horticultural products, art, and/or crafts on public property or a public right-of-way. Public outdoor markets may also be referred to as "farmer's markets," "art markets", or "craft markets."

5.32.030 Estate, garage, moving and yard sales.

The following regulations shall apply to estate, garage, moving, and yard sales:

1. The duration of each estate, garage, moving, or yard sale shall not exceed seventy-two (72) hours and may occur on Fridays, Saturdays, and Sundays only;
2. Nonilluminated signs not exceeding six (6) square feet in area shall be permitted during the seventy-two (72) hours of the sale. The signs shall pertain to the estate, garage, moving, or yard sale and include the personal property owner's address. All signs must be removed no later than 12:00 a.m. on the Monday following the sale.

5.32.040 Private outdoor markets.

Private outdoor markets shall not be permitted, except:

1. If it complies with all business licensing and registration regulations and all commercial zoning regulations; or
2. If organized and operated by a registered nonprofit organization and in compliance with all of the provisions in section 5.32.030.

5.32.050 Public outdoor markets.

The following regulations shall apply to public outdoor markets:

1. Public outdoor markets shall receive prior written approval from the City of Belen Office of the Parks and Recreation Department.
2. The duration of each public outdoor market shall not exceed seventy-two (72) hours and shall occur on Fridays, Saturdays, and Sundays only.
3. Any public outdoor market held in conjunction with a planned event may petition for an extension of the duration, which shall be filed with the City of Belen's Parks and Recreation Department on an application provided by the department.

5.32.060 Outdoor motor vehicles sales.

All outdoor motor vehicle sales shall occur on a commercial-zoned lot in conjunction with a business licensed by the City of Belen for that expressed purpose and sold only on the premises of the licensed business.

5.32.070 Violation—Penalty.

Any person violating any provision of this chapter shall be found guilty of a misdemeanor and be fined not more than three hundred dollars (\$300.00) or imprisoned for a period of not more than ninety (90) days, or both fined and imprisoned.

Chapter 5.36 CANNABIS²

5.36.010 Purpose.

This chapter is adopted to protect the health, safety, and welfare of the community. Except as allowed by CRA and its pertinent laws or regulations for personal or private use, the City of Belen enacts reasonable regulations and requires compliance with the CRA and its pertinent laws or regulations.

5.36.020 Definitions.

The below words and phrases, wherever used in this article, shall be construed as defined in the NMCRA or pertinent laws and regulations with their subsequent amendments.

"Advertisement" means:

1. A statement or a depiction that is intended to induce the purchase of cannabis products and that is displayed in printed material or on a sign or other outdoor display or presented in a radio, television, or other media broadcast or in digital media; and
2. Does not include:
 - a. A sign or outdoor display or other statement permanently affixed to a licensed premise that is intended to induce the sale of a cannabis product produced or sold on the premises;
 - b. A label affixed to a cannabis product or the covering, wrapper, or container of a cannabis product; or
 - c. An editorial or other material printed in a publication when the publication of the editorial or material was not paid for by a licensee and was not intended to promote the sale of cannabis products by a particular brand or company.

"Cannabis" means:

1. All parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin; and
2. Does not include:
 - a. The mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake; or the sterilized seed of the plant that is incapable of germination; or
 - b. The weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink, or another product.

"Cannabis consumption area" means an area where cannabis products may be served and consumed.

"Cannabis courier" means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

"Cannabis establishment" means:

1. A cannabis testing laboratory;
2. A cannabis manufacturer;
3. A cannabis producer;
4. A cannabis retailer;
5. A cannabis research laboratory; and
6. A vertically integrated cannabis.

"Cannabis extract" means:

1. A product obtained by separating resins, tetrahydrocannabinols, or other substances from cannabis by extraction methods approved by the division; and

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2. Does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink, or another product.

"Cannabis flowers" means only the flowers of a cannabis plant.

"Cannabis manufacturer" means a person that:

1. Manufactures cannabis products;
2. Packages cannabis products;
3. Has cannabis products tested by a cannabis testing laboratory; or
4. Purchases, acquires, sells, or transports wholesale cannabis products to other cannabis establishments.

"Cannabis producer" means a person that:

1. Cultivates cannabis plants;
2. Has unprocessed cannabis products tested by a cannabis testing laboratory;
3. Transports unprocessed cannabis products only to other cannabis establishments; or
4. Sells cannabis products wholesale.

"Cannabis producer microbusiness" means a cannabis producer at a single licensed premise that possesses no more than two hundred (200) total mature cannabis plants at any one (1) time.

"Cannabis product" means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

"Cannabis research laboratory" means a facility that produces or possesses cannabis products and all parts of the plant genus *Cannabis* for the purpose of studying cannabis cultivation, characteristics, or uses.

"Cannabis retailer" means a person that sells cannabis products to qualified patients, primary caregivers, or reciprocal participants, or directly to consumers.

"Cannabis server permit" means an authorization that allows a person to directly offer, sell or serve cannabis or cannabis products as part of commercial cannabis activity in a cannabis consumption area.

"Cannabis server permit education provider" means a person that provides cannabis server education courses and examinations.

"Cannabis testing laboratory" means a person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing.

"Cannabis training and education program" means a practical or academic curriculum offered by a New Mexico public post-secondary educational institution designed to prepare students for participation in the cannabis industry.

"Commercial cannabis activity" means:

1. The cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale, or consignment of cannabis products; and
2. Does not include activities related only to the medical cannabis program, to cannabis training and education programs, or to the personal cultivation or use of cannabis.

"Consumer" means a person twenty-one (21) years of age or older who purchases, acquires, owns, possesses, or uses a cannabis product for a purpose other than resale.

"Contaminant" means pesticides and other foreign material, such as hair, insects, or other similar adulterants, in harvested cannabis.

"Controlling person" means:

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1. A person that controls a financial or voting interest of ten (10) percent or more of, or an officer or board member of, a cannabis establishment; and
 2. Does not include a bank or licensed lending institution.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Department" means the regulation and licensing department.

"Director" means the director of the division.

"Division" means the cannabis control division of the department.

"Dry weight basis", when used in the context of regulation of commercial cannabis activity, means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers, and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant.

"Facility" means a building, space, or grounds licensed for the production, possession, testing, manufacturing, or distribution of cannabis, cannabis extracts, or cannabis products.

"Financial consideration" means value that is given or received, directly or indirectly, through sales, barter, trade, fees, charges, dues, contributions, or donations.

"Homegrown" or "homemade" means grown or made for purposes that are not dependent or conditioned upon the provision or receipt of financial consideration.

"Household" means a housing unit and includes any place in or around the housing unit at which an occupant of the housing unit produces, manufactures, keeps or stores homegrown cannabis, or homemade cannabis products.

"Immature cannabis plant" means a cannabis plant that has no observable flowers or buds.

"Industry standards" means the prevailing customary standards of business practice in the cannabis industry in jurisdictions within the United States.

"Integrated cannabis microbusiness" means a person that is authorized to conduct one (1) or more of the following:

1. Production of cannabis at a single licensed premise; provided that the person shall not possess more than two hundred (200) total mature cannabis plants at any one (1) time;
2. Manufacture of cannabis products at a single licensed premise;
3. Sales and transportation of only cannabis products produced or manufactured by that person;
4. Operation of only one (1) retail establishment;
5. Couriers of cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers;
6. All enclosed public and private areas at the location that are used in the business and include offices, kitchens, restrooms, and storerooms;
7. All areas outside of a building that is specifically included in the license for the production, manufacturing, wholesale sale, or retail sale of cannabis products; and
8. With respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases, or has a right to occupy.

"Local jurisdiction" means a municipality, home rule municipality or county.

"Manufacture" means to compound, blend, extract, infuse, package or otherwise prepare a cannabis product.

"Medical cannabis" means cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act.

"Medical cannabis program" means the program created pursuant to the Lynn and Erin Compassionate Use Act.

"Medical cannabis registry" means the system by which the department of health approves or denies applications and issues and renews registry identification cards for qualified patients.

"Primary caregiver" means a resident of New Mexico who is at least eighteen (18) years of age and who is responsible for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the Lynn and Erin Compassionate Use Act.

"Public place" means a place to which the general public has access and includes hallways, lobbies, and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation.

"Qualified patient" means a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act.

"Reciprocal participant" means a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program.

"Retail establishment" means a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

"Superintendent" means the superintendent of regulation and licensing.

"Unprocessed" means unaltered from an original, raw or natural state.

"Vertically integrated cannabis establishment" means a person that is authorized to act as any of the following:

1. A cannabis courier;
2. A cannabis manufacturer;
3. A cannabis producer; and
4. A cannabis retailer.

5.36.030 Cannabis consumption prohibited on public property.

- A. Public property means any property owned or occupied by the City of Belen.
- B. The use, sale, cultivation, manufacture, production, storage or distribution of cannabis or cannabis products is prohibited on public property.
- C. No person shall smoke cannabis products in a public place, except in a cannabis consumption area, or on any city public property.

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- D. No person shall smoke cannabis products in any place where the smoke is detectable from a public place or on public property.

5.36.040 Cannabis consumption areas.

Cannabis consumption areas are subject to the following:

- A. A cannabis consumption area is defined as an area in which consumption is limited to consumption by qualified patients or reciprocal participants and may be located inside any cannabis retailer; provided, however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
- B. Cannabis consumption areas that are open to consumers are subject to the following:
1. The smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a designated smoking area or a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16; and
 2. Access to cannabis consumption areas open to consumers is restricted to persons twenty-one (21) years of age and older.

5.36.050 Cannabis retail.

- A. Cannabis retail is allowed, provided that the establishment complies with all New Mexico state law requirements, including, but not limited to, any required spacing from other uses or facilities. For the purposes of this article, all measurements for cannabis retail shall be from the licensed premises as defined by CRA.
- B. This use shall not include a storage or display area outside of fully enclosed portions of a building.
- C. A licensed premises, as defined by NMCRA, is prohibited within three hundred (300) feet of any school or child day care facility.
- D. This use is conditional if cannabis will be consumed on-site. If cannabis is consumed on-site, an air filtration plan approved by the city's environmental health department is required.
- E. On-site consumption is allowed in the following areas: A designated smoking area or in a standalone building from which smoke does not infiltrate other indoor work places or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Air Act. Alcohol consumption in a cannabis consumption area is prohibited. Subject to the condition as set forth in section 5.36.040;
1. The designated cannabis smoking room will be located in a non-work area where employees are not required to enter the designated cannabis smoking rooms upon reporting to work.
 2. The designated cannabis smoking room shall have signage to designate smoking areas and the locations where signage will be installed.
 3. The designated cannabis smoking room shall have a separate heating, ventilation and air-conditioning (HVAC) system such that none of the air in the designated cannabis smoking room will be recirculated into other parts of the cannabis business's premises or other parts of the premises.

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4. The designated cannabis smoking room shall be completely separated from the remainder of the premises and all doors leading to the designated cannabis smoking room must be self-closing.
 - F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m. The three hundred-foot separation distance does not apply to a residence on the same lot or parcel as the cannabis establishment. There is no minimum separation distance between one (1) cannabis establishment and another or between a cannabis establishment and a residence both owned by the same individual or entity.

5.36.060 Cannabis cultivation facility (industrial uses).

- A. Cannabis cultivation is allowed, provided that the establishment complies with all New Mexico state law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of this chapter, all measurements for cannabis cultivation shall be from the licensed premises as defined by NMCRA.
- B. All licensed premises as defined by the NMCRA is prohibited within three hundred (300) feet of any residential zone district, school, or child day care facility.
- C. Except as specified in subsection (d) below, all activities in this use must be conducted within the fully enclosed portions of a building unless a conditional use approval is obtained to conduct specific activities outside of the fully enclosed portions of a building.
- D. An incidental storage area is allowed outside of the fully enclosed portions of a building, but must be screened from view from each property line in which a permit is required.
- E. An air filtration plan approved by the city's development services director is required which is following the Dee Johnson Clean Air Act.
- F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m. for any cannabis cultivation facility located within three hundred (300) feet of a residential zone district.

5.36.070 Cannabis-derived products manufacturing.

- A. Cannabis-derived products manufacturing is allowed, provided that the establishment complies with all New Mexico state law requirements, including, but not limited to, any required spacing from other uses or facilities. For the purposes of the chapter, all measurements for cannabis-derived product manufacturing shall be from the licensed premises as defined by NMCRA.
- B. All licensed premises, as defined by NMCRA, is prohibited within three hundred (300) feet of any residential zone district, school, or child day care facility.
- C. Except as specified in subsection (d) below, all activities in this use shall be conducted within the fully enclosed portions of a building unless a conditional use approval is obtained to conduct specific activities outside of the fully enclosed portions of a building.
- D. An incidental storage area is allowed outside of the fully enclosed portions of a building but shall be screened from view from each property line.
- E. An air filtration plan approved by the city environmental health department is required.
- F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m. for any cannabis-derived products facility.
- G. Commercial on-site cannabis consumption is prohibited in all zones until regulations promulgated by the state become effective, in which cases all other city provisions regarding on-site consumption not prohibited by state regulation will be effective.

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- H. Commercial on-site consumption of cannabis is the commercial cannabis activity of smoking, vaporizing, and ingesting cannabis, or cannabis products in a licensed cannabis consumption area. Commercial on-site consumption is considered part of cannabis relief. Unless licensed pursuant to the Lynn and Erin Compassionate Use Act, access to the cannabis consumption area is restricted to persons twenty-one (21) years of age and older.

5.36.080 Delivery permit restrictions.

The following restrictions shall be placed on cannabis delivery permits:

Only medical or retail cannabis transporters who qualify as a social equity applicant as defined in and by the National Cannabis Industry Membership hold a valid license and a delivery permit issued may deliver regulated cannabis to private residences of customers and patients, subject to the provisions the NMRCA and its pertinent regulations and rules.

5.36.090 Allowable land use zoning.

- A. R-1, R-1A, R-2, R-3, and R-4: The City hereby incorporates the limitations outlined in NMSA § 26-2C-27 which states that it is unlawful for a person without licenses to intentionally produce cannabis products except as otherwise allowed in the CRA or by obtaining a permit from the City as follows:
1. A person twenty-one (21) years of age or older who intentionally produces:
 - a. More than six (6) and up to twelve (12) mature or immature cannabis plants shall be issued a penalty assessment pursuant to NMSA 1978, § 31-19A-1, and is subject to a fine of fifty dollars (\$50.00); and
 - b. More than twelve (12) mature or immature cannabis plants is guilty of a fourth-degree felony and may be sentenced as provided in NMSA 1978, § 31-18-15.
 2. A person who is eighteen (18) years of age or older but less than twenty-one (21) years of age who intentionally produces:
 - a. Up to six (6) mature or immature cannabis plants shall be issued a penalty assessment pursuant to NMSA 1978, § 31-19A-1, and is subject to a fine of fifty dollars (\$50.00);
 - b. More than six (6) mature or immature cannabis plants and up to twelve (12) mature or immature cannabis plants is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of NMSA 1978, § 31-19-1; and
 - c. More than twelve (12) mature or immature cannabis plants is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of NMSA 1978, § 31-18-15.
 3. A person who is less than eighteen (18) years of age who intentionally produces cannabis products is guilty of a civil violation and shall be subject to:
 - a. Attendance at a four-hour evidence-based drug education and legal rights program at no cost to the minor; or
 - b. Four (4) hours of community service.
- B. A-R, agricultural allowed cultivation. Cultivation shall take place in compliance with the CRA or its regulations.
- C. C-1 and C-2, cannabis testing laboratory, cannabis producer, cannabis retail, cannabis consumption area, microbusiness, integrated cannabis establishment, cannabis training, and education.

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- D. M-C, cannabis testing laboratory, cannabis manufacturer. Safe and secure extraction is only allowed in this zone.
 - E. C/R zone. Retail and cannabis consumption area with a conditional use permit.

5.36.100 Business registration.

Any person engaged in commercial cannabis activities must comply with the city's business registration ordinance.

5.36.110 Cannabis establishment permit.

Any person seeking to operate a cannabis establishment in the city shall obtain a cannabis establishment permit under the following conditions:

- A. The permit shall be obtained from the city development services department.
- B. The application fee cost for the initial permit and the annual renewal fee shall be established by the City Council. The annual renewal date shall be the anniversary date of when the permit was first obtained.
- C. The community development services director shall require the following information from the applicant:
 - 1. The name, address, and business organization of the applicant and location the applicant intends to transact business, as well as the specific business to be transacted.
 - 2. If the applicant is an individual, the residence address of the applicant as well as the applicant's birthdate and Social Security number.
 - 3. If the applicant is a partnership, the names, residence addresses, birthdates, and Social Security numbers of all partners.
 - 4. If the applicant is a limited liability company, the state of organization, address of the resident agent in New Mexico sufficient for service of process, the name of the managing member together with residence address, birth date, and the name, residence address, birthdate and Social Security number of each member of the company.
 - 5. If the applicant is a corporation, the state of incorporation, the name and address of the registered agent in New Mexico sufficient for service of process, the name, residence, birthdate of each officer or director of the corporation.
 - 6. Prior to the issuance of a permit, any limited liability company or corporation shall provide a certificate of good standing.
 - 7. The applicant shall provide federal and state tax identification numbers.
 - 8. The applicant shall provide proof of compliance with the city's ordinance including the business registration ordinance.
- D. Prior to issuance of a permit, the code enforcement officer shall confirm compliance with distancing requirements as provided in this chapter (location).
- E. Prior to issuance of a permit, the cannabis establishment must also pass the city's building code inspection.
- F. Prior to any issuance or annual renewal of a permit, the cannabis establishment shall be inspected by the city's fire department. The cannabis establishment shall comply with Chapter 38 (as it may be

amended from time to time) of the National Fire Protection Association (NFPA) 1 Fire Code and pertinent city's fire protection ordinance. Cannabis manufacturers, cannabis research laboratories, and cannabis testing laboratories shall receive semiannual inspections. All other cannabis establishments shall receive an annual inspection, at the discretion of the City's fire department.

- G. A temporary permit may be issued for state licensing purposes pending completion of the fire and building inspections upon satisfactory evidence that all other conditions have been met for a permit. A final permit shall be issued upon completion of the fire and building inspections.
- H. No permit shall be issued to a mobile, temporary or portable building.
- I. No permit shall be issued to a drive-through cannabis establishment.
- J. Failure to meet the conditions above will result in the non-issuance of a permit.
- K. If denial of an application for a new permit or renewal permit is deemed necessary by the city development services department, written notice of the decision shall be provided to the applicant.
- L. Any person or entity denied a permit may, within ten (10) days of the receipt of notice of the denial, file an appeal with the City Council. The notice of appeal shall be delivered to the City Manager and a hearing shall be scheduled within thirty (30) days of receipt of the notice. The appeal shall be de novo and the burden of proof shall be on the applicant to establish entitlement to a permit. The council shall make written findings of fact and conclusions of law supporting its decision. Any further appeal shall be to the district court, in accordance with NMSA 1978, § 39-3-1.1, and Rule 1-074 NMRA.
- M. Any person or entity denied a permit may apply to the City Council for a variance from any portion of this chapter caused by unusual conditions not caused by the actions of the applicant. In granting variances, the City Council may require such conditions as will substantially secure the objectives of this chapter and not adversely affect the health, safety, and general welfare of the public, if otherwise consistent with the general purpose and intent of this chapter and if not injurious or detrimental to the surrounding area. Each request for a variance shall be submitted in writing. Each request shall be considered at the same time as the application for the permit. The City Council shall make separate written findings of fact and conclusions of law on each requested variance. The decision and order shall be prepared, signed, and filed within a reasonable time following the public meeting at which the variance is considered.
- N. Operation of a cannabis establishment without a permit is a violation of this chapter.

5.36.120 Existing medical cannabis establishments.

Any medical cannabis establishment existing as of the date of the passage of the ordinance from which this chapter is derived shall not be required to comply with the location requirements in this chapter. However, the owners of such businesses shall, within ninety (90) days of the effective date of the ordinance from which this chapter is derived, submit an application for a permit.

5.36.130 Fees.

- A. Planning and building cannabis application/inspection fee \$581.00
- B. Planning and building preliminary site plan review fee \$556.00
- C. Planning and building records management fee \$100.00
- D. For cultivation cottage or nursery planning and building/inspection fee \$838.00
- E. Hazardous materials inventory statement plan review \$50.00

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- F. Cannabis transporter permit \$225.00
 - G. Hazardous materials and flammable liquids permits—Use, storage \$100.00
 - H. A cannabis waste plan review \$50.00
 - I. Must comply with Ordinance #2009-09, Section 1:1 The International Fire Code (IFC) 2018 edition, chapter 38.

5.36.140 Renewal annual application fee for all cultivation permit types.

- A. Planning and building cannabis application/inspection fee \$581.00
- B. Planning and building records management fee \$100.00
- C. Planning and building site inspection (not charged unless required).

5.36.150 Renewal annual application fee for all other permit types.

- A. Planning and building cannabis application/inspection fee \$581.00
- B. Planning and building records management fee \$100.00
- C. City issued business license \$35.00
- D. Cannabis transporter permit \$225.00
- E. Any other necessary licenses permitted by the NMCRA \$250.00

Licensee shall ensure that all licensed premises are in compliance with [the] Construction Industries Licensing Act, and comply with the Occupational Health and Safety Act.

5.36.160 Enforcement.

A city code compliance officer, the city's police chief, or its designee or the City of Belen fire chief or designee may issue citations for violation of this chapter. With the exception of sections in this chapter, which are punishable by state law, any violation of this chapter may be enforced in any court of competent jurisdiction

1. The maximum penalty per violation shall be three hundred dollars (\$300.00). Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent City from seeking injunctive relief, if appropriate.
2. Any person found guilty of violating any provision of this chapter shall be found guilty of a misdemeanor and fined not more than three hundred dollars (\$300.00) or imprisoned for a period of not more than ninety (90) days, or both fine and imprisonment.

5.36.170 Violations.


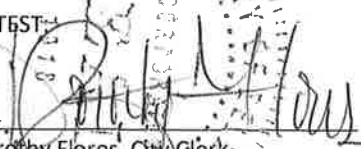
Violations of this chapter in addition to any other violation mandated under other pertinent city ordinances or Code shall not limit any other allowed penalties. Any abatement procedures which may be taken by the City of Belen for any violation of this chapter shall be considered a violation of city ordinance. The civil judgment or criminal conviction under this chapter or CRA shall not relieve such individuals or entities from their responsibility of correcting unlawful conditions or removing unlawful structures or improvements under this chapter, and the City shall retain its authority to order any corrective actions related thereto.

5.36.180 Remedies.

The remedies provided in this chapter shall be cumulative and in addition to any federal, state, or local remedy, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable laws except as otherwise punishable by state law.

PASSED, APPROVED, and ADOPTED this 19th day of December, 2022


Robert Noblin, Mayor


ATTEST

Dorothy Flores, City Clerk