

1
2 **City of Belen Ordinance No.**
3

4 **As Amended and Restated**

5 **AN ORDINANCE ADOPTING THE LEGISLATIVE INTENT, FINDINGS,**
6 **AND PURPOSE RELATING TO THE REGULATION OF CANNABIS;**
7 **SETTING FORTH VIOLATIONS; AND PROVIDING FOR**
8 **ENFORCEMENT AND PENALTIES.**
9

10 **WHEREAS**, cannabis contains tetrahydrocannabinol ("THC"), which remains on
11 Schedule 1 of the Controlled Substances Act pursuant to 21 U.S.C. § 811 et al. and any
12 possession and use thereof is a violation of federal law pursuant to 21 U.S.C. § 841 et. al., and
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14 **WHEREAS**, the New Mexico Cannabis Regulation Act ("NMCRA"), allows the
15 establishment and operation of certain cannabis dispensaries in City of Belen according to a
16 prescribed statutory and regulatory process, and
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18 **WHEREAS**, New Mexico Governor Michelle Lujan Grisham signed House Bill 2
19 (HB 2) on April 12, 2021, which passed the House 38-32 and the Senate 22-15 during a
20 special legislative session called by the governor, and contains provisions authorizing the
21 possession, consumption, purchase, processing, manufacturing or transporting of cannabis by
22 an individual who is at least twenty-one (21) years of age; authorizing possession, transport,
23 cultivation or processing of cannabis plants in a primary residence by adults age 21 years and
24 older; allowing certain medical cannabis plants in a primary residence for adults age 21 years
25 and older; allowing a certain medical cannabis dispensary or other non-dispensary applicant
26 to apply to the Department of Health Services (the "Department") to become a licensed
27 cannabis establishment authorized to engage in the retail sale, cultivation, and manufacturing
28 of cannabis; and allowing the Department, or another entity designated by the Department, to
29 become a cannabis testing facility to test the potency of cannabis and detect any harmful
30 contaminants, and
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32 **WHEREAS**, the City of Belen finds that the NMCRA authorizes cannabis
33 establishments to use chemical extraction or chemical synthesis, including butane and other
34 flammable gases, to extract cannabis concentrate ("extraction"), which poses a threat to the
35 health, safety and security of the community and increases the responsibilities of law
36 enforcement and City departments to respond to violations of state and local laws, including
37 building, electrical and fire codes; and due to significant health and safety risks such
38 extraction will only be allowed in manufacturing zoned areas. It is required that a permit be
39 obtained from the City of Belen Fire Chief pursuant to the International Fire Code
40 Operational Permit 105.6.49 (Cannabis extraction systems regulated thereunder).
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43 **WHEREAS**, the City of Belen finds that the NMCRA authorizes the City of Belen to

44 (1) adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act
45 or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of
46 licenses and operating times consistent with neighborhood uses; and

47 (2) Allow for the smoking, vaporizing and ingesting of cannabis products within an indoor
48 or outdoor cannabis consumption area if:

49 (a) access to the cannabis consumption area is restricted to persons twenty-one years
50 of age and older unless licensed pursuant to the Lynn and Erin Compassionate Use
51 Act;; and

52 (b) The cannabis establishment or integrated cannabis microbusiness is located at a
53 minimum distance from a school or daycare center as determined by the local
54 jurisdiction, but which minimum distance shall not be set at any more than 300 feet
55 from a school or daycare center that was in existence at the time the establishment
56 or microbusiness was licensed.

57
58 **WHEREAS**, City of Belen seeks to protect public health, safety, and welfare by
59 enacting reasonable regulations on cannabis establishments in unincorporated areas of Belen
60 consistent with its comprehensive zoning plan.

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62 **WHEREAS**, this ordinance is subject to change or amendment as the NMCRA's rules
63 and regulations are amended and adopted, and it shall comply with NMCRA and its
64 regulations.

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66 **NOW THEREFORE**, the City of Belen adopts the following ordinance for
67 the regulation of cannabis consistent with the NMCRA.

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69 **1. PURPOSE**

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

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76 **2. DEFINITIONS**

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

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81 A. "advertisement":

82 (1) means a statement or a depiction that is intended to induce the purchase of
83 cannabis products and that is displayed in printed material or on a sign or other
84 outdoor display or presented in a radio, television or other media broadcast or in
85 digital media; and

86 (2) Does not include:

87 (a) A sign or outdoor display or other statement permanently affixed to a
88 licensed premises that is intended to induce the sale of a cannabis product
89 produced or sold on the premises;

- 90 (b) A label affixed to a cannabis product or the covering, wrapper or
91 container of a cannabis product; or
- 92 (c) an editorial or other material printed in a publication when the
93 publication of the editorial or material was not paid for by a licensee and
94 was not intended to promote the sale of cannabis products by a particular
95 brand or company;
- 96 B. "cannabis":
- 97 (1) means all parts of the plant genus Cannabis containing a delta-9-
98 tetrahydrocannabinol concentration of more than three-tenths percent on a dry
99 weight basis, whether growing or not; the seeds of the plant; the resin extracted from
100 any part of the plant; and every compound, manufacture, salt, derivative, mixture or
101 preparation of the plant, its seeds or its resin; and
- 102 (2) Does not include:
- 103 (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake
104 made from the seeds of the plant; any other compound, manufacture, salt,
105 derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the
106 sterilized seed of the plant that is incapable of germination; or
- 107 (b) The weight of any other ingredient combined with cannabis
108 products to prepare topical or oral administrations, food, drink or
109 another product;
- 110 C. "cannabis consumption area" means an area where cannabis products may be served
111 and consumed;
- 112 D. "cannabis courier" means a person that transports cannabis products to qualified
113 patients, primary caregivers or reciprocal participants or directly to consumers;
- 114 E. "cannabis establishment" means:
- 115 (1) A cannabis testing laboratory;
- 116 (2) A cannabis manufacturer;
- 117 (3) A cannabis producer;
- 118 (4) A cannabis retailer;
- 119 (5) A cannabis research laboratory;
- 120 (6) A vertically integrated cannabis
- 121 F. "cannabis extract":
- 122 (1) means a product obtained by separating resins, tetrahydrocannabinols or
123 other substances from cannabis by extraction methods approved by the
124 division; and
- 125 (2) Does not include the weight of any other ingredient combined with cannabis
126 extract to prepare topical or oral administrations, food, drink or another product;
- 127 G. "cannabis flowers" means only the flowers of a cannabis plant;
- 128 H. "cannabis manufacturer" means a person that:
- 129 (1) manufactures cannabis products;
- 130 (2) Packages cannabis products;
- 131 (3) Has cannabis products tested by a cannabis testing laboratory; or
- 132 (4) Purchases, acquires, sells or transports wholesale cannabis products to other
133 cannabis establishments;
- 134 I. "cannabis producer" means a person that:
- 135 (1) Cultivates cannabis plants;
- 136 (2) Has unprocessed cannabis products tested by a cannabis testing laboratory;

137 (3) Transports unprocessed cannabis products only to other cannabis establishments; or
138 (4) Sells cannabis products wholesale;

139 J. "cannabis producer microbusiness" means a cannabis producer at a single licensed
140 premises that possesses no more than two hundred total mature cannabis plants at
141 any onetime;

142 K. "cannabis product" means a product that is or that contains cannabis or cannabis
143 extract, including edible or topical products that may also contain other
144 ingredients;

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

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

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

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

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

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

160 R. "commercial cannabis activity":
161 (1) Means the cultivation, production, possession, manufacture, storage, testing,
162 researching, labeling, transportation, couriating, purchase for resale, sale or
163 consignment of cannabis products; and
164 (2) Does not include activities related only to the medical cannabis program, to
165 cannabis training and education programs or to the personal cultivation or use
166 of cannabis;

167 S. "consumer" means a person twenty-one years of age or older who purchases,
168 acquires, owns, possesses or uses a cannabis product for a purpose other than resale;

169 T. "contaminant" means pesticides and other foreign material, such as hair, insects
170 or other similar adulterants, in harvested cannabis;

171 U. "controlling person":
172 (1) Means a person that controls a financial or voting interest of ten percent or
173 more of, or an officer or board member of, a cannabis establishment; and
174 (2) Does not include a bank or licensed lending institution;

175 V. "cultivation" means any activity involving the planting, growing, harvesting, drying,
176 curing, grading or trimming of cannabis;

177 W. "department" means the regulation and licensing department;

178 X. "director" means the director of the division;

179 Y. "division" means the cannabis control division of the department;

180 Z. "dry weight basis", when used in the context of regulation of commercial cannabis
181 activity, means a process by which delta-9-tetrahydrocannabinol concentration is
182 measured relative to the aggregate weight of all parts of the plant genus Cannabis,

183 whether growing or not, including the leaves of the plant, the flowers and buds of the
184 plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point
185 of harvest by a licensee and with no moisture added to the harvested plant;

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

188 BB. "financial consideration" means value that is given or received, directly or indirectly,
189 through sales, barter, trade, fees, charges, dues, contributions or donations;

190 CC. "homegrown" or "homemade" means grown or made for purposes that are not
191 dependent or conditioned upon the provision or receipt of financial consideration;

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

195 EE. "Immature cannabis plant" means a cannabis plant that has no observable flowers or
196 buds;

197 FF. "industry standards" means the prevailing customary standards of business practice in
198 the cannabis industry in jurisdictions within the United States;

199 GG. "Integrated cannabis microbusiness" means a person that is authorized to conduct
200 one or more of the following:

201 (1) production of cannabis at a single licensed premises; provided that the person
202 shall not possess more than two hundred total mature cannabis plants at any
203 one time;

204 (2) manufacture of cannabis products at a single licensed premises;

205 (3) Sales and transportation of only cannabis products produced or manufactured by
206 that person;

207 (4) Operation of only one retail establishment; and

208 (5) Couriering of cannabis products to qualified patients, primary caregivers or
209 reciprocal participants or directly to consumers;

210 (6) All enclosed public and private areas at the location that are used in the business
211 and includes offices, kitchens, restrooms and storerooms;

212 (7) All areas outside of a building that are specifically included in the license for
213 the production, manufacturing, wholesale sale or retail sale of cannabis
214 products; and

215 (8) with respect to a location that is specifically licensed for the production of
216 cannabis outside of a building, the entire unit of land that is created by subsection or
217 partition of land that the licensee owns, leases or has a right to occupy;

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

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

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

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

225 LL. "medical cannabis registry" means the system by which the department of health
226 approves or denies applications and issues and renews registry identification cards for
227 qualified patients;

228 MM. "Primary caregiver" means a resident of New Mexico who is at least eighteen years of
229 age and who is responsible for managing the well-being of a qualified

230 Patient with respect to the medical use of cannabis pursuant to the Lynn and Erin
231 Compassionate Use Act;
232 NN. "public place" means a place to which the general public has access and includes
233 hallways, lobbies and other parts of apartment houses and hotels that do not constitute rooms
234 or apartments designed for actual residence; highways; streets; schools; places of
235 amusement; parks; playgrounds; and places used in connection with public passenger
236 transportation;
237 OO. "Qualified patient" means a resident of New Mexico who holds a registry identification
238 card pursuant to the Lynn and Erin Compassionate Use Act;
239 PP. "reciprocal participant" means a person who is not a resident of New Mexico and who
240 holds proof of enrollment by a governmental regulatory authority to participate in the medical
241 cannabis program of another state of the United States, the District of Columbia or a territory
242 or commonwealth of the United States in which the person resides or a person who holds
243 proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation,
244 tribe or pueblo to participate in its medical cannabis program;
245 QQ. "retail establishment" means a location at which cannabis products are sold to qualified
246 patients, primary caregivers and reciprocal participants and directly to consumers;
247 RR. "Superintendent" means the superintendent of regulation and
248 licensing; SS. "unprocessed" means unaltered from an original, raw or
249 natural state; and
250 TT. "Vertically integrated cannabis establishment" means a person that is authorized to
251 act as any of the following:

- 252 (1) A cannabis courier;
- 253 (2) A cannabis manufacturer;
- 254 (3) A cannabis producer; and
- 255 (4) A cannabis retailer

257 3. CANNABIS CONSUMPTION PROHIBITED ON PUBLIC PROPERTY

- 259 A. Public property means any property owned or occupied by the City of Belen.
- 260 B. The use, sale, cultivation, manufacture, production, storage or distribution of Cannabis or
261 Cannabis products is prohibited on public property.
- 262 C. No person shall smoke cannabis products in a public place, except in a cannabis
263 consumption area, or on any City public property.
- 264 D. No person shall smoke cannabis products in any place where the smoke is detectable from a
265 public place or on public property.

267 4. CANNABIS CONSUMPTION AREAS

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

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287 **5. CANNABIS RETAIL**
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- 289 A. Cannabis retail is allowed, provided that the establishment complies with all New Mexico State
290 law requirements, including but not limited to any required spacing from other uses or facilities.
291 For the purposes of this article, all measurements for Cannabis Retail shall be from the licensed
292 premises as defined by NMCRA.
293 B. This use shall not include a storage or display area outside of fully enclosed portions of a
294 building.
295 C. A licensed premises, as defined by NMCRA, is prohibited within 300 feet of any school or
296 child day care facility.
297 D. This use is conditional if cannabis will be consumed on-site. If cannabis is consumed on-site, an
298 air filtration plan approved by the State New Mexico State Department of Health or the City
299 Manager or his/her designee is required.
300 E. On-site consumption is allowed in the following areas; a designated smoking area or in a
301 standalone building from which smoke does not infiltrate other indoor work places or other indoor
302 public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Air Act.
303 Alcohol consumption in a cannabis consumption area is prohibited. Subject to the condition as set
304 forth in Section 4 of the Amended Ordinance;
305 (1) The Designated Cannabis Smoking Room will be located in a non-work area where
306 employees are not required to enter the Designated Cannabis Smoking Rooms upon
307 reporting to work.
308 (2) The Designated Cannabis Smoking Room shall have signage to designate smoking areas
309 and the locations where signage will be installed.
310 (3) The Designated Cannabis Smoking Room shall have a separate heating, ventilation and
311 air-conditioning (HVAC) system such that none of the air in the Designated Cannabis
312 Smoking Room will be recirculated into other parts of the Cannabis Business's
313 premises, or other parts of the premises.
314 (4) The Designated Cannabis Smoking Room shall be completely separated from the remainder
315 of the premises, and all doors leading to the Designated Cannabis Smoking Room must be
316 self-closing.

317 F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m.

318 With regard to distance measures, the Ordinance shall refer to NMCRA or any other pertinent
319 law or the City's pertinent zoning ordinance including the City's custom and practice consistent
320 with NMCRA.

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322 With regard to minimum separation distance between one cannabis establishment and another,
323 the Ordinance shall refer to the City's current zoning ordinance or current custom and practice to
324 allow retail businesses by the City or otherwise allowed by NMCRA or any other pertinent laws.
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328 **6. CANNABIS CULTIVATION FACILITY (INDUSTRIAL USES)**

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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 Article, 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 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 300 feet of a Residential zone district.

7. 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 article, 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 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 State New Mexico State Department of Health or the City Manager or his/her designee required.

F. Customer visits and deliveries are prohibited between 12:00 a.m. and 8 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 provision regarding on-site consumption not prohibited by state regulation will be effective.

H. Commercial on-site consumption of cannabis is the commercial cannabis activity of smoking, vaporizing, and ingesting of cannabis or cannabis products in a licensed cannabis consumption area. Commercial on-site consumption is considered part of Cannabis Relief. Unless license pursuant to the Lynn and Erin compassionate use act, access to the cannabis consumption area is restricted to persons 21 years of age and older.

8. 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 holding a valid license and a delivery

380 permit issued may deliver regulated cannabis to private residences of customers and patients,
381 subject to the provisions the NMRCRA and its pertinent regulations and rules.

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383 **9. ALLOWABLE LAND USE ZONING:**
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385 A. R-1, R-1A, R-2, R-3, and R-4: the City hereby incorporates the limitations outlined in
386 NMSA Section 26-2C-27 which states that it is unlawful for a person without licenses to
387 intentionally produce cannabis products except as otherwise allowed in the NMCRA or by
388 obtaining a permit from the City as follows:

- 389 (1) A person twenty-one years of age or older who intentionally produces:
390 (a) more than six and up to twelve mature or immature cannabis plants shall be issued a
391 penalty assessment pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine
392 of fifty dollars (\$50.00); and
393 (b) more than twelve mature or immature cannabis plants is guilty of a fourth degree
394 felony and may be sentenced as provided in Section 31-18-15 NMSA 1978.
395 (2) A person who is eighteen years of age or older but less than twenty-one years of age
396 who intentionally produces:
397 (a) up to six mature or immature cannabis plants shall be issued a penalty assessment
398 pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars
399 (\$50.00);
400 (b) more than six mature or immature cannabis plants and up to twelve mature or
401 immature cannabis plants is guilty of a misdemeanor and shall be sentenced pursuant to
402 the provisions of Section 31-19-1 NMSA 1978; and
403 (c) more than twelve mature or immature cannabis plants is guilty of a fourth degree
404 felony and shall be sentenced pursuant to the provisions of Section 31-18- 15 NMSA
405 1978.
406 (3) A person who is less than eighteen years of age who intentionally produces cannabis
407 products is guilty of a civil violation and shall be subject to:
408 (a) attendance at a four-hour evidence-based drug education and legal rights program at
409 no cost to the minor; or
410 (b) four hours of community service.

411 B. A-R, Agricultural allowed cultivation.

412 Cultivation shall take place in compliance with the NMCRA or its regulations.

413 C. C-1 and C-2: Cannabis testing Laboratory, Cannabis producer, Cannabis retail, Cannabis
414 Consumption area, Microbusiness, integrated cannabis establishment, Cannabis Manufacturer,
415 Cannabis training and education.

416 D. M-C: Cannabis testing Laboratory, Cannabis manufacturer. Safe and secure extraction is
417 only allowed in this zone.

418 E. C/R Zone- Retail and Cannabis Consumption area..
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420 **10. BUSINESS REGISTRATION**
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422 Any person engaged in commercial cannabis activities must comply with the City's
423 Business Registration Ordinance.
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425 **11. CANNABIS ESTABLISHMENT PERMIT**
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427 Any person seeking to operate a cannabis establishment in the City shall obtain a
428 cannabis establishment permit under the following conditions:
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- 430 A. The permit shall be obtained from the City Clerk.
- 431 B. The application fee cost for the initial permit and the annual renewal fee shall be
432 established by the City Council. The annual renewal date shall be the anniversary date of when
433 the permit was first obtained.
- 434 C. The City Clerk shall require the following information from the applicant:
- 435 (1) The name, address, and business organization of the applicant and location the
436 applicant intends to transact business, as well as the specific business to be transacted.
- 437 (2) If the applicant is an individual, the residence address of the applicant as well as the
438 applicant's birthdate and social security number.
- 439 (3) If the applicant is a partnership, the names, residence addresses, birthdates, and
440 social security numbers of all partners.
- 441 (4) If the applicant is a Limited Liability Company, the state of organization, address of
442 the resident agent in New Mexico sufficient for service of process, the name of the
443 managing member together with residence address, birthdate, and the name, residence
444 address, birthdate and social security number of each member of the company.
- 445 (5) If the applicant is a corporation, the state of incorporation, the name and address of
446 the registered agent in New Mexico sufficient for service of process, the name, residence,
447 birthdate of each officer or director of the corporation.
- 448 (6) Prior to the issuance of a permit, any Limited Liability company or corporation
449 shall provide a certificate of good standing.
- 450 (7) The applicant shall provide Federal and State tax identification numbers.
- 451 (8) The applicant shall provide proof of compliance with the City's ordinance including
452 the Business Registration Ordinance.
- 453 D. Prior to issuance of a permit, the Code Enforcement Officer shall confirm compliance with
454 distancing requirements as provided in this Ordinance (Location).
- 455 E. Prior to issuance of a permit, the cannabis establishment must also pass the City's Building
456 Code inspection.
- 457 F. Prior to any issuance or annual renewal of a permit, the cannabis establishment shall be
458 inspected by the City's Fire Department. The cannabis establishment shall comply with
459 Chapter 38 (as it may be amended from time to time) of the National Fire Protection
460 Association (NFPA) 1 Fire Code and pertinent City's Fire Protection Ordinance. Cannabis
461 manufacturers, cannabis research laboratories, and cannabis testing laboratories shall receive
462 semiannual inspections. All other cannabis establishments shall receive an annual inspection,
463 at the discretion of the City's Fire Department.
- 464 G. A temporary permit may be issued for state licensing purposes pending completion of the
465 fire and building inspections upon satisfactory evidence that all other conditions have been met
466 for a permit. A final permit shall be issued upon completion of the fire and building
467 inspections.
- 468 H. No permit shall be issued to a mobile, temporary or portable building.
- 469 I. No permit shall be issued to a drive-through cannabis establishment.
- 470 J. Failure to meet the conditions above will result in non-issuance of a permit.
- 471 K. If denial of an application for a new permit or renewal permit is deemed necessary by the
472 City Clerk and/or Development Services Department, written notice of the decision shall be
473 provided to the applicant.
- 474 L. Any person or entity denied a permit may, within ten (10) days of the receipt of notice of
475 the denial, file an appeal with the City Council. The Notice of Appeal shall be delivered to the
476 City Manager and a hearing shall be scheduled within thirty (30) days of receipt of the Notice.
477 The appeal shall be de novo and the burden of proof shall be on the applicant to establish
478 entitlement to a permit. The Council shall make written findings of fact and conclusions of law

479 supporting its decision. Any further appeal shall be to the District Court, in accordance with
480 NMSA 1978, Section 39-3-1.1 and Rule 1- 074 NMRA.

481 M. Any person or entity denied a permit may apply to the City Council for a variance from
482 any portion of this Ordinance caused by unusual conditions not caused by the actions of the
483 Applicant. In granting variances, the City Council may require such conditions as will
484 substantially secure the objectives of this Ordinance and not adversely affect the health,
485 safety, and general welfare of the public, if otherwise consistent with the general purpose
486 and intent of this Ordinance and if not injurious or detrimental to the surrounding area.
487 Each request for a variance shall be submitted in writing. Each request shall be considered
488 at the same time as the application for the permit. The City Council shall make separate
489 written findings of fact and conclusions of law on each requested variance. The decision
490 and order shall be prepared, signed, and filed within a reasonable time following the
491 public meeting at which the variance is considered.

492 N. Operation of a cannabis establishment without a permit is a violation of this Ordinance.
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494 **12. EXISTING MEDICAL CANNABIS ESTABLISHMENTS**

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496 Any medical cannabis establishment existing as of the date of the passage of this
497 Ordinance shall not be required to comply with the location requirements in this
498 Ordinance. However, the owners of such businesses shall, within 90 days of the effective
499 date of this Ordinance, submit an application for a permit.
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501 **13. FEES**

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503 A. Planning and Building Cannabis application/inspection fee \$581.00
504 B. Planning and Building preliminary site plan review fee \$556.00
505 C. Planning and Building records management fee \$100.00
506 D. For Cultivation cottage or nursery Planning and Building /inspection fee \$838.00
507 E. Hazardous Materials Inventory Statement Plan Review - \$50
508 F. Cannabis Transporter Permit \$225
509 G. Hazardous Materials and Flammable Liquids Permits - Use, Storage \$100
510 H. A cannabis waste plan review-\$50
511 I. Must comply with Ordinance #2009-09 Section 1:1 The International Fire Code(IFC)
512 2018 edition, chapter 38.
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514 **14. RENEWAL ANNUAL APPLICATION FEE FOR ALL CULTIVATION PERMIT** 515 **TYPES**

- 516
517 A. Planning and Building cannabis application/inspection fee \$581.00
518 B. Planning and Building records management fee \$100.00
519 C. Planning and Building site inspection which will not be charged unless required.
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521 **15. RENEWAL ANNUAL APPLICATION FEE FOR ALL OTHER PERMIT TYPES**

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523 A. Planning and Building cannabis application/inspection fee \$581.00
524 B. Planning and Building records Management fee \$100.00
525 C. City issued Business License \$35.00
526 D. Cannabis Transporter Permit \$225
527 E. Any other necessary licenses permitted by the NMCRA \$250.00
528 F. Licensee shall ensure that all licensed premises are in compliance with Construction
529 Industries Licensing Act, and comply with the Occupational Health and Safety Act.

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16. ENFORCEMENT

A City Code Compliance Officer, the City's Police Chief or designee or the City of Belen Fire Chief or designee may issue citations for violation of this Ordinance. With the exception of sections in this Ordinance which are punishable by State law, any violation of this Ordinance may be enforced in any court of competent jurisdiction.

- (1) The maximum penalty per violation shall be \$300. 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 ordinance 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.

17. Violations of this ordinance 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 article shall be considered as a violation of City Ordinance. The Civil judgment or criminal conviction under this Ordinance or NMCRA shall not relieve such individuals or entities from their responsibility of correcting unlawful conditions, or removing unlawful structures or improvements under this Ordinance, and the City shall retain its authority to order any corrective actions related thereto.

18. The remedies provided in this Ordinance 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.

19. No person shall allow “at home extraction” of any types of cannabis defined under this ordinance.

20. PROVIDING FOR SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

21. APPLICABILITY OF OTHER LAWS.

All cannabis uses are subject to all other applicable sections of the City's ordinances.

22. EMERGENCY CLAUSE AND EFFECTIVE DATE

Because of the urgent need for regulation pursuant to this Ordinance, the City Council declares that it is necessary for the public peace, health and safety that this Ordinance take effect immediately after passage when it is recorded in the book kept by the City for that purpose and authenticated by the signature of the City Clerk. In the event a court of competent jurisdiction finds that the passage of this Ordinance did not constitute an emergency, then the effective date of this Ordinance shall be 30 days after this Ordinance is recorded with the City Clerk.

Due to the nature of this NMRCA's continuing developing rules and regulations, the City Manager or his designee including the City Clerk and/or the Development Services Director may implement

581 all necessary and proper measures to comply with NMCRA and its regulations.

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583 **PASSED, ADOPTED AND APPROVED BY THE MAYOR AND GOVERNING BODY**
584 **OF THE City of Belen, NM, and this ___ day of _____, 2023.**

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CITY OF BELEN COUNCIL

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Robert C. Noblin, Jr., Mayor

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Steven Holdman, Councilor

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Frank F. Ortega, Councilor

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Danny Bernal Jr., Councilor

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Tracey Armijo, Councilor

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609 APPROVED AS TO FORM:

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Roseann Peralta, City Manager

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Y. Jun Roh, City Attorney

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621 ATTEST:

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Dorothy Flores, City Clerk

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