

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-30 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn

1 **ORDINANCE**

2 **ADDING A NEW PART 7 TO CHAPTER 9, ARTICLE 5 OF THE REVISED**
3 **ORDINANCES OF ALBUQUERQUE 1994, TO PROHIBIT SMOKING OF**
4 **CANNABIS IN PUBLIC, AND CREATING A CIVIL PENALTY**

5 **WHEREAS, the Cannabis Regulation Act, NMSA 1978, § 26-2C-1 et seq.,**
6 **(“CRA”) authorizes the consumption of cannabis and cannabis-related**
7 **products in private spaces and licensed cannabis consumption areas; and**

8 **WHEREAS, the City Council aims to protect the health and safety of**
9 **persons in the City of Albuquerque, regulate public smoking, and limit**
10 **exposure to the harmful effects of secondhand cannabis smoke and the**
11 **potential negative secondary effects on the use and enjoyment of public**
12 **spaces by the general public; and**

13 **WHEREAS, pursuant to the CRA, NMSA 1978, § 26-2C-26, a person who**
14 **smokes cannabis in a public place, except in a cannabis consumption area**
15 **shall be subject to a civil penalty of fifty dollars (\$50.00); and**

16 **WHEREAS, 311 reports that it has received only 10 calls for public**
17 **cannabis smoking over the past 5 years, and it has not received a single**
18 **complaint in the time since cannabis became legal in April 2021; and**

19 **WHEREAS, criminalizing lawful conduct that the State has deemed only a**
20 **civil infraction may be contrary to State law and is unnecessary when public**
21 **cannabis smoking is not a problem; and**

22 **WHEREAS, because violations constitute a civil penalty and the**
23 **Albuquerque Police Department is already overloaded, the Environmental**
24 **Health Department should be responsible for enforcing this prohibition within**
25 **the City; and**

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1 WHEREAS, for Fiscal Year 2023, the City Council appropriated funding to
2 the Environmental Health Department for Cannabis Services; and

3 WHEREAS, the City Council finds it necessary to explicitly prohibit
4 smoking of cannabis in public and create a procedure for enforcement of this
5 prohibition.

6 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
7 ALBUQUERQUE:

8 SECTION 1. A new Part 7 is hereby added to Health, Safety and Sanitation,
9 Chapter 9, Article 5, of the Revised Ordinances of Albuquerque, 1994, as
10 follows:

11 “[§ 9-5-7-1. SHORT TITLE.

12 Sections 9-5-7-1 et seq. may be cited as the “Smoking Cannabis in Public
13 Ordinance.”

14 § 9-5-7-2. DEFINITIONS.

15 For purposes of this section, the following definitions shall apply unless
16 the context clearly indicates or requires a different meaning:

17 *Enforcement Authority.* The Mayor, the Mayor’s designated agents, and
18 the Environmental Health Department.

19 *Smoking Cannabis in Public.* Means inhaling, exhaling, burning,
20 carrying or holding any lighted, heated, or otherwise volatilized cannabis
21 product, including all types of cigarettes, cigars, pipes, e-cigarettes,
22 vaporizers, and any other lighted cannabis product in a place to which the
23 general public has access and includes hallways, lobbies and other parts
24 of apartment houses and hotels that do not constitute rooms or apartments
25 designed for actual residence; highways; streets; schools; places of
26 amusement; parks; playgrounds; open space; places used in connection
27 with public passenger transportation, parking lots, and public ways
28 including sidewalks and any other area between the curb lines or lateral
29 lines of the roadway and the adjacent property lines. This definition does
30 not include or apply to otherwise lawful activities within a licensed
31 cannabis consumption area.

32 § 9-5-7-3. CONSUMPTION OF CANNABIS IN PUBLIC.

1 (A) Cannabis Smoking Prohibited in Public. No person shall smoke
2 cannabis in public within the City of Albuquerque.

3 (B) Enforcement. The Mayor, the Mayor's designated agents, and the
4 Environmental Health Department shall have the authority to enforce this
5 ordinance, which includes authority to issue a civil penalty.

6 § 9-5-7-4. NOTICE OF VIOLATION; NOTICE OF HEARING; HEARINGS;
7 CONTINUANCE; HEARING PROCEDURES; ORDER; PENALTIES.

8 (A) Notice of violation. If the enforcement authority reasonably believes
9 that a person has violated this ordinance, such official shall serve written
10 notice upon the same of the alleged violation (the "notice of violation"). The
11 notice requirement is satisfied if personal service of same is had upon the
12 person or mailed to the person's last known address by certified mail.

13 (1) The notice of violation shall specify the provisions of this article
14 which have been allegedly violated, and shall set forth with reasonable clarity
15 the factual basis for each alleged violation, and shall state that an
16 administrative hearing will be scheduled by the City and that a notice of the
17 hearing will be mailed to the person's last known address by certified mail in
18 accordance with this article.

19 (2) The enforcement authority shall provide the City Clerk with a copy of
20 the notice of violation for transmission to the City Independent Office of
21 Hearings within three business days of the notice of violation being served.

22 (3) A violation constitutes a civil infraction punishable by a fine of up to
23 \$50.00. An individual served with a notice of violation may elect to pay the
24 fine in lieu of the hearing.

25 (B) Hearing and penalties relating to a notice of violation.

26 (1) Hearing. Any person in receipt of a notice of violation, and any other
27 interested person, may appear and produce evidence at any administrative
28 hearing relating to a notice of violation. The final order of the City's
29 administrative hearing officer on such matter constitutes the final
30 administrative adjudication of the matter by the City.

31 (a) Notice of hearing. Within three business days of its receipt of the
32 notice of violation, the City Independent Office of Hearings shall mail a notice
33 of the hearing to the person and the enforcement authority who delivered the

notice of violation, via certified mail. The notice shall specify the location of the hearing, a date and time for the hearing that is between 15 and 20 days from its mailing of the notice of hearing. Such notice shall briefly state the nature of the hearing and that failure to attend may result in an automatic fine of \$50.00.

(b) Continuation. A first continuance of the hearing may be ordered by the hearing officer assigned to hear the matter upon a showing of good cause by any party. Any subsequent continuance request may be granted only with the consent of all parties to the matter.

(c) Hearing procedure. A Hearing Officer shall hold a hearing pursuant to the procedures outlined in the Independent Office of Hearings "IHO" Ordinance, ROA 1994, §§ 2-7-8-1 to 2-7-8-9. The hearing shall be conducted following the rules of evidence and civil procedure for the district courts. The enforcement authority has the burden to prove the violation by a preponderance of the evidence. The responding person has the burden to prove any defenses by a preponderance of the evidence. If the enforcement authority prevails, the responding person shall pay the fine within 30 consecutive days from the date of the final written order. Following a hearing, the responding person may appeal the decision of the Hearing Officer to the District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

(d) Order. Within five days of the conclusion of the hearing, the hearing office shall issue a final written order that identifies the penalty being imposed (if any) relating to the allegations from the notice of violation.

(2) Findings required for imposition of penalty. The hearing officer may enter an order imposing a penalty if it is found that a person violated this article.

(3) Penalty. A violation constitutes a civil infraction punishable by a fine of up to \$50.00. Upon finding a violation, the hearing officer may enter an order imposing a fine of up to \$50.00.]"

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not

1 affect the validity of the remaining provisions of this ordinance. The Council
2 hereby declares that it would have passed this ordinance and each section,
3 paragraph, sentence, clause, word or phrase thereof irrespective of any
4 provision being declared unconstitutional or otherwise invalid.

5 SECTION 3. COMPILATION. SECTION 1 of this Ordinance shall amend, be
6 incorporated in, and made part of the Revised Ordinances of Albuquerque,
7 New Mexico, 1994, as a new Part 7 to Chapter 9, Article 5, titled "Smoking
8 Cannabis in Public."

9 SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect ninety days
10 after publication by title and general summary.

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