



Ultra Health.

August 22, 2023

**Via Email**

Cannabis Control Division  
Regulation and Licensing Department  
[Ccd.publiccomment@state.nm.us](mailto:Ccd.publiccomment@state.nm.us)  
[Rld.cannabiscontrol@state.nm.us](mailto:Rld.cannabiscontrol@state.nm.us)

Re: Comments on Proposed Revisions to Regulation 16.8.2.8 NMAC

Dear Cannabis Control Division,

Please accept these public comments from New Mexico Top Organics-Ultra Health, Inc., and Ultra Health, LLC sent in relation to the proposed Cannabis Control Division revisions to regulations 16.8.2.8, ahead of the public hearing on August 31, 2023.

**16.8.2.8(Z) NMAC**

The Division's proposed regulation 16.8.2.8(Z) NMAC would explicitly give the Division the option to conduct an on-site inspection of a license applicant's premises prior to granting a license.

Generally, New Mexico Top Organics-Ultra Health, Inc., and Ultra Health, LLC (collectively, "Ultra Health") approve of the Cannabis Control Division's small attempt to introduce a culture of compliance into New Mexico's cannabis market. Over the past two-and-one-half years, the Division's emphasis on removing barriers to licensure has resulted in a kind of Wild West atmosphere: voluntary compliance is low, serious violations are common, and the tax payments made by licensees are far lower than they should be.

Frankly, the Division should have required and conducted pre-licensure inspections since the very beginning of the licensing regime. Today, with thousands of licenses already issued, a pre-licensure inspection requirement will have a marginal and minimal impact. Nevertheless, Ultra Health does support a pre-licensure inspection requirement.

However, Ultra Health supports a **mandatory** pre-licensure inspection requirement. That is, Ultra Health supports the Division conducting a pre-licensure inspection requirement on every license applicant. The regulation should read, "Prior to issuance of a license, the division **shall** conduct an on-site inspection of the proposed premises."

If the Division is truly committed to compliance, then it must commit to pre-licensure inspections. If the Division only "may" conduct an inspection, licensees and applicants will continue to believe that they can flout the rules without consequence. If the Division only "may" conduct an inspection, licensees will continue to believe they have impunity. The Division must

signal to licensees and applicants that obtaining a cannabis licensee is a serious matter and that a license must be treated with respect.

### **16.8.2.8(BB) NMAC**

The Division's proposed regulation 16.8.2.8(BB) NMAC would require licensees applying for renewal to provide the Division with copies of local business licenses for all licensed premises.

Ultra Health cautions the Division against overestimating the utility of local business licenses and underestimating the complications of such a mandate. Ultra Health understands the purpose and theme of this proposed regulation. The Division needs an easy method to ensure compliance—a method that does not require live inspectors to make physical visits to all licensed premises. The Division needs a proxy for compliance—an alternate way to gauge whether a licensee is compliant.

Most of the professions and trades which the Regulation & Licensing Department oversees have proxies for competence or compliance. By a "proxy," Ultra Health means that some test or educational course indicates the competence or compliance of the applicant. Since RLD can rely on such a proxy, RLD does not have to directly evaluate the competence or compliance of an applicant.

For example, applicants for contractors' licenses must take and pass written tests that measure their knowledge of construction. Applicants for a pharmacy license must show graduation from an accredited pharmacy education program. Applicants for a real estate agent license must pass a written exam. Even applicants for a barber license must show graduation from an accredited education program.

Currently, cannabis licensing has no such proxy. The Division does not employ any objective written test to evaluate a cannabis license applicant's knowledge. The Division does not require completion of any educational program, because few, if any, such programs exist. Instead, the Division must rely on actual, direct, first-hand evaluation of a licensee's competence and compliance through in-person, on-site inspections.

Obviously, such inspections are time-consuming and labor-intensive. The Division is unlikely to complete an on-site inspection of every single licensed cannabis premise within a calendar year. Faced with the herculean task of evaluating compliance and competence, the Division understandably wants to find a suitable proxy.

Local business licenses are not a suitable proxy for an on-site, in-person inspection of a licensed cannabis establishment, for multiple reasons.

### **Local Business Licenses Are Poor Proxies**

First, the requirements to obtain a local business license vary widely and wildly across all the municipalities and counties of New Mexico.<sup>1</sup> Some local governments require a fire inspection every year as part of a business license renewal, but most do not. Some local governments do not even require a fire inspection for initial issuance of a business license, because they do not have the fire marshal staff. Some local governments require submission of an applicant's state tax identification number, but some do not. Some local governments conduct a fairly in-depth examination of zoning and neighboring uses, but some do not.

Because of the extremely wide variety of processes, the issuance of a local business license does not guarantee any particular level of inspection or evaluation. Farmington does not evaluate the same things as Albuquerque does; Hobbs does not evaluate the same things as Santa Fe does. Some towns treat the business license as simply a fundraising opportunity; others treat the business license as an opportunity for a rigorous evaluation.

If the Division wants a uniform, objective standard to measure competence and compliance, the local business license is not it. If the Division wants to ensure that a cannabis retail premise in Las Cruces is following all the same rules as a retail premise in Taos, it cannot depend on a local business license.

Second, a local business license does not say anything about regulatory matters of particular concern in the cannabis industry. Certain aspects of compliance are unique or are more important to cannabis licensees. Security is one such aspect: does the licensee have security cameras, alarms, bars on the windows, a safe room for storage of cannabis and cash? Municipalities simply will not check for those things in the course of issuing a business license. Even if a fire marshal does a fire inspection, the marshal will check for things like entrances, exits, emergency lights, and extinguishers; the marshal will not check for security measures. And if the local government does not require a periodic fire inspection, then no one from the local government may ever even step foot inside the premise.

Another aspect of compliance unique to the cannabis industry is use of track-and-trace software. Again, no local government will check on use of track-and-trace software. That is entirely outside of the local government's concern.

Likewise, the local government will not be checking to see if a business license applicant has paid necessary Cannabis Excise Taxes. If the local government is particularly well-staffed, it might check on overall income tax or gross receipts tax compliance. In reality, most governments are understaffed and likely do not even have time or manpower to do any kind of tax check.

A local business license has relevance only to a very few aspects of compliance: can the business fill out a form, can the business pay \$50 a year for the license, is the cannabis business in the correct zone, and are there fire safety problems?

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<sup>1</sup> Ultra Health operates sites in dozens of New Mexico locations, so it is knowledgeable about local business license requirements.

A local business license does not reach the core competencies of cannabis licensees. It is only through on-site, in-person inspections by Division staff that cannabis-specific compliance can be evaluated.

Third, some business licenses may be unobtainable through no fault of the cannabis licensee. Some local governments in New Mexico actually do not issue local business licenses. For example, the website of Otero County says, “Otero County does not require business licenses” (see attached screenshot). Other local governments are doing the painstaking work of switching from paper systems to digital systems and face delays and backlogs. For example, Alamogordo is currently switching to a new system, and it has issued a letter stating, “The City of Alamogordo is in the process of converting to a new business registration program and will take a few months to complete the process. Therefore, the \$35 business registration fee due by January 31, 2023, will be waived, and your business registration will be automatically extended. However, a new business registration certificate will not be issued. If the State requires you to have a business registration certificate, we can issue a temporary certificate upon request” (see attached letter).

Between rural locations that do not issue business licenses and municipalities updating their technology, there will always be some complication that leads to a cannabis licensee being unable to obtain or renew the business license. Then, the Division will be thrust into the position of evaluating a licensee’s excuse—is it a legitimate excuse because some particular local government is backlogged, or does not issue them, or had a computer system breakdown? The Division may end up creating more work for itself by taking on the task of sifting through local business license processes.

As the Division can see, local business licenses have very low usefulness but have a high potential for complications. The local business license is not useful for the task the Division needs to perform: measure, judge, and evaluate a cannabis licensee’s competence and compliance. The local business license also bears a high risk of increasing the Division’s workload, due to the sheer number of local governments and their ever-changing processes.

### The Better Proxy Is Cannabis Excise Tax

A far better proxy for competence and compliance—at least for licensees with a retail function—is payment of Cannabis Excise Tax. As the Division knows, all cannabis licensees with a retail function should be paying Cannabis Excise Tax. Even those licensees who, for whatever reason, do not actually sell anything in a particular month, should still be filing a CET return that shows no sales.

Payment of Cannabis Excise Tax actually does have utility in showing a retail licensee’s compliance and competence. It shows 1) the licensee is recording sales with enough specificity to calculate tax payments; 2) the licensee is managing the business well enough to be able to pay the tax; 3) the licensee respects and obeys the legal cannabis system.

It is simply common sense to observe that people (or businesses) who do not pay taxes are likely to be breaking other laws and violating other regulations. Certainly, there are

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compliant taxpayers who might still need attention in other areas, but a non-taxpayer or delinquent taxpayer is much more likely to be abjectly failing in other aspects of compliance.

It is simple common sense for the Division to concentrate on non-taxpayers or delinquent taxpayers in its compliance efforts. Ultra Health agrees that all cannabis licensees should be inspected, but as a practical matter, the Division needs a coherent method to prioritize its compliance efforts. It needs a way to organize its “to do” list and get the most compliance bang for its buck. Right now, there are far too many licensed premises and far too few compliance officers, and the Division needs to organize its efforts in a more rational, sensical manner.

Prioritizing the inspection of and investigation of non-taxpayers or delinquent taxpayers will better serve the Division’s goals than random checks or business license submissions. Licensees who do not pay their fair share of Cannabis Excise Tax are more likely to be shirking their legal duties in other ways—they are more likely to be out of compliance with track-and-trace, with security measures, with safety, and with every other aspect of compliance.

If the Division really wants a quick and easy way to know if licensees are following the rules, it should require submission of a licensee’s Cannabis Excise Tax returns. The returns should show that the licensee paid its fair share of tax, and if the licensee cannot submit such returns, the Division should investigate further.

### **Conclusion**

Ultra Health understands that the Division is under considerable pressure to rein in the wild horse that New Mexico’s cannabis industry has become. Ultra Health supports the Division’s compliance efforts, but Ultra Health cautions the Division not to surrender too quickly to the compulsion to “just do something.” The Division should not rush into doing something that has little usefulness simply so that it can show it “did something.” Instead, the Division should think carefully about the most useful, most efficient, and most strategic mechanisms for targeting wrongdoers.

Please do not hesitate to contact Ultra Health with any questions.

Sincerely,

*/s/ Kristina Caffrey*  
Kristina Caffrey  
Chief Legal Officer  
Ultra Health  
[kristina@ultrahealth.com](mailto:kristina@ultrahealth.com)  
505-401-7847 (cell)



## Forms

[Otero County Planning Commission](#)

[Subdivision Regulations \(PDF\)](#)

[Zoning](#)

[Home](#) > [Government](#) > [Departments](#) > [Administration](#) > [Subdivision Planning](#) > [Zoning](#)

## Zoning

Otero County has no zoning or licensing requirements. However, restrictive covenants, deed restrictions, county ordinances, or the regulations of other government entities may apply. Certain areas of the county may fall under review by other governing bodies in the case of ETJ (extra-territorial jurisdiction) but currently there is not zoning in Otero County.

### Building Permits & Inspections

For Building Permits or Inspections please contact:

State of New Mexico Regulation and Licensing Department  
Construction Industry Division (CID)  
Manufactured Housing Division (MHD)  
505 South Main Street, Suite 118  
Loretto Town Center  
Las Cruces, New Mexico 88001  
Phone: 575-524-6320

### Licensing & Exam Services

For Licensing or Exam Services please call 877-663-9267 or go to the PSI Exams website:

### Environmental Concerns



Home > FAQs

**How do I obtain a business license?**  
Otero County does not require business licenses; however, the County does require that businesses comply with State license requirements.

▼ **County Manager**

[Show All Answers](#)

- 1. **Where and when does the Board of County Commissioners meet?**
- 2. **Where can I get a copy of the meeting agendas?**
- 3. **How do I obtain a business license?**
- 4. **How can I address my concerns to the Board?**
- 5. **Where can I find phone numbers of County Departments?**
- 6. **What population information is available on Otero County?**

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# City of Alamogordo

OFFICE OF THE CITY CLERK

1376 E. NINTH STREET • ALAMOGORDO, NEW MEXICO 88310-5838 • (575) 439-4100 FAX (575) 439-4396

July 24, 2023

Dear Alamogordo Business Owners,

**Thank you for your continued patience while the City of Alamogordo goes through the conversion of the new business registration system. This is an amended letter to the letter that was sent out on November 7, 2022, and May 26, 2023. Please see the changes in bold.**

The City of Alamogordo is in the process of converting to a new business registration program and will take a few months to complete the process. Therefore, the \$35 business registration fee due by January 31, 2023, will be waived, and your business registration will be automatically extended. However, a new business registration certificate will not be issued. If the state requires you to have a business registration certificate, we can issue a temporary certificate upon request after December 1, 2022. You may also use this letter as proof of the business registration extension.

Per our ordinance amendment of Chapter 17, all business registration renewals will no longer have the due date of January 31<sup>st</sup> of each year, the renewal dates will be staggered. Therefore, once the program conversion is in operation, **you will receive a notification of how to access the new system. We anticipate the conversion will be completed by October 31, 2023.** Please assist us in getting this notification to you by emailing us, calling us, or stopping by with your current email address, and including your business name and business location. The email address where you can send this information is [cityclerk@ci.alamogordo.nm.us](mailto:cityclerk@ci.alamogordo.nm.us) or call our office at (575) 439-4100 option 6.

Thank you for your continued business and your patience while we go through this conversion. If you have any questions, you may contact me at [rhughs@ci.alamogordo.nm.us](mailto:rhughs@ci.alamogordo.nm.us) or by calling me at (575) 439-4100 option 6.

Sincerely,

Rachel Hughs, CMC  
City Clerk