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Testimony of Council Member Gale A. Brewer

Before the New York State Senate Subcommittee on Cannabis, Standing Committees on Finance, Agriculture, and Investigations and Government Operations

Regarding the Consumer Accessibility and Retail Sale of Legal Adult-Use Cannabis

October 30, 2023

My name is Gale A. Brewer and I am the City Council Member for District 6, representing most of the Upper West Side from W. 108th Street to W. 54th Street and all of Central Park. I am also Chair of the City Council Committee on Oversight and Investigations. Thank you Chairs Cooney, Krueger, Hinchey, and Skoufis for the opportunity to testify.

On December 15, 2022, Mayor Eric Adams announced the “Cannabis NYC Interagency Enforcement Task Force” to crack down on unlicensed cannabis stores. Members of the task force were the New York City Sheriff’s Office, the New York City Police Department (NYPD), the New York City Department of Consumer and Worker Protection (DCWP), and the New York State Office of Cannabis Management (OCM).

The announcement came four days after *Upper Weed Side* was splashed across the New York Daily News front page. The article was about a block-by-block survey of the 6th District conducted by my interns, which revealed 26 stores (out of 61 visited) openly selling cannabis, edibles, and vapes. The stores operated without any attention from law enforcement—unless they were robbed. At a City Council oversight hearing on the proliferation of illegal cannabis shops that I held in January, NYPD Chief of Patrol John Chell testified that there were 593 robberies at smoke shops in 2022—a 137% increase over the prior year. Chief Chell testified that when robberies occur, the NYPD’s response is to educate illegal cannabis store owners and employees on proper security measures.

Illegal cannabis stores gained traction during the six-month delay between then-Governor Andrew Cuomo signing the MRTA into law and Governor Kathy Hochul establishing OCM and the Cannabis Control Board. Sheriff Anthony Miranda testified at my January oversight hearing that there were approximately 1,400 unlicensed cannabis retailers citywide (the Mayor has said 2,000; some estimates put the number much higher). Prior to my hearing I joined Sheriff Miranda for a day of enforcement in my district. We confiscated thousands of products from three stores, including Zaza Waza Smoke Shop on W. 87th and Columbus. I watched deputies and OCM investigators remove everything—even products they found behind a trapdoor. Two

days later Zaza Waza was restocked, and it remains open today. I know because it's across the street from my district office.

One year has passed since my survey and illegal operators have only gained traction. A July 25, 2023 letter from Deputy Mayor Philip Banks to my committee staff stated that citywide just five stores have closed, nine have either vacated the premises or entered agreements to stop selling, and 33 had nuisance abatement cases brought against them by Corporation Counsel. No information on the dispositions of cases is available, and Deputy Mayor Banks has refused to provide more information or current data.

Separately, the Manhattan District Attorney sent hundreds of letters to illicit cannabis retailers and their landlords threatening legal action under the public nuisance law. A small number of stores stopped operating, and a small number of landlords commenced eviction proceedings. It is an arduous process. The DA needs evidence from the Sheriff, NYPD, or OCM to bring the cases and has not received cooperation in this endeavor. The DA also needs a comprehensive list of suspected illegal cannabis stores, which the administration either does not have or will not share (my sense is it's the former).

One letter went to the landlord of Exotics Town Convenience at 301 W. 55th Street. DCWP visited the store and wrote two violations: one for lacking a Non-Food Retail License and another for lacking an Electronic Cigarette Dealer License. Months later, OCM raided the store and affixed a large "Illicit Cannabis Seized" sticker on the window. According to the Block Association, the sticker was removed the next day, and the store is back to selling cannabis.

Liquor stores never locate within 200 feet of a school, but illegal smoke shops have opened in close proximity to campuses. The NYPD claims they are unable to police them because only OCM can enforce the MRTA. Students are purchasing and vaping cannabis products in school. This is very upsetting to me.

The City Council passed Local Law 107, sponsored by Council Member Lynn Schulman, which holds commercial landlords accountable for their tenants' illegal sale of cannabis, cigarettes and vaping products. First violations trigger written warnings and subsequent offenses result in fines ranging from \$5,000 to \$10,000. The law was enacted in July. We do not yet know how many landlords have been fined (the administering agency is only required to report quarterly). Critics say the fines are too low to dissuade landlords from renting to cannabis shops.

When Mayor Adams announced the Cannabis NYC Interagency Enforcement Task Force he said, "We know we have to match the aggressiveness of those who believe that they're going to impact the legal industry. Trust me, if you lose a million dollars of product, you're not looking to open another store. The best way to become educated is to have your stuff confiscated."

Confiscation is not working, and I have not seen aggressiveness from the administration. I have some suggestions:

1. We must acknowledge that there is no way out of this problem without greater involvement from the NYPD. I am not suggesting we revive harmful prohibition policies, but unlicensed cannabis stores are largescale criminal operations. Possession of more than five pounds of cannabis is a felony. Sale of more than sixteen ounces is a felony. Sale to a minor is a felony. The police need to enforce the penal code and, in doing so, gather the evidence needed to secure injunctions in court. They should start with the

illegal stores closest to high schools.

2. The Department of Health and Mental Hygiene should take an aggressive role in shuttering stores. The New York City Health Code grants DOHMH unique executive authority to assure the safety of the City and its residents. Multiple provisions of the code allow DOHMH to shutter unlicensed cannabis stores—particularly Article 81 and Article 3. Sheriff Anthony Miranda said after a joint operation in August that DOHMH “clearly had more significant authority about closing down some of these locations.” Still, DOHMH officials have said they are not in the business of cannabis enforcement.
3. Recent amendments to the MRTA intended to bolster enforcement have had no discernable impact. OCM can change that by allowing New York City’s DAs to bring so-called 16-A cases against unlicensed retailers. The cases allow authorities to obtain temporary and permanent injunctions against illegal operators and levy thousands of dollars in fines on a daily basis. Only the Attorney General has authority to bring these cases, but the MRTA allows OCM to delegate authority to local prosecutors with the stroke of a pen. They should.
4. I am eager to see licensed dispensaries open in my district, but there is a great deal of confusion among applicants and Community Boards on the process. Mayor Adams created Cannabis NYC to spearhead the administration’s support of the legal cannabis industry. I am told that the reason I have never seen Cannabis NYC’s work is because the office is woefully understaffed. The administration should invest in it.
5. Finally, Mayor Adams should revive the enforcement taskforce and add the Health Department and District Attorneys as members. All government stakeholders should meet in one room, regularly, to share information and devise a cooperative strategy to shutter stores methodically. There are enough laws on the books to start today.

Thank you again for the opportunity to testify.