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OF
THE CITY OF NEW YORK

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August 11, 2023

Dr. Ashwin Vasani
Commissioner
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Dear Commissioner Vasani,

I write regarding the effort to close unlicensed cannabis shops throughout New York City. As you know, these retailers pose an imminent threat to public health.

The New York City Sheriff, New York State Office of Cannabis Management, Manhattan District Attorney's Office, and Corporation Counsel have taken the lead on enforcement of unlicensed cannabis shops. Officials estimate there are 1,400 to 2,000 unlicensed shops citywide. Approximately 850 shops have been inspected since November 2022. Five have been closed.

I have not given up on closing illegal stores, and I request that the Department of Health and Mental Hygiene (DOHMH) to join the effort.

The New York City Health Code grants DOHMH unique executive authority "to assure the maintenance of public health, the prevention of disease, or the safety of the City and its residents." Multiple provisions of the code allow DOHMH to shutter unlicensed cannabis stores with relative ease.

For example, cannabis retailers that sell edible cannabis products (nearly all do) meet the definition of "Food Service Establishment" under Article 81 Section §81.03.¹ Section §81.39 authorizes padlocking of any Food Service Establishment if continued operation is an imminent hazard to public health.²

¹ §81.03 Definitions: Food Service Establishment means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

² §81.39 Sealing unclean equipment, utensils and vehicles; denial, suspension and revocation of permits; enforcement; padlocking: (d) The Department may deny or suspend a permit or authorization and order immediate cessation of operations and/or service of food at a food service establishment or non-retail food processing establishment if continued operation is an imminent hazard to public health. Any person ordered to cease operations and/or service of food pursuant to this subsection shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

You, as Commissioner, are further authorized under Article 3 Section §3.01 to declare a public health emergency “where urgent public health action is necessary to protect the public health against an imminent or existing threat.” Declaration of a public health emergency would grant DOHMH broad authority to shutter unlicensed cannabis shops “to prevent, mitigate, control or abate an emergency.”³

Have you in your capacity as Commissioner, or as a member of the Board of Health, had conversations with the Administration about enforcement of unlicensed cannabis shops under the Health Code? If so, what was the outcome of those conversations?

Thank you for your attention to this matter. I look forward to your prompt response.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, slightly slanted style.

Gale A. Brewer

³ §3.01 General Provisions of the Department: (d) Where urgent public health action is necessary to protect the public health against an imminent or existing threat, the Commissioner may declare a public health emergency. Upon the declaration of such an emergency, and during the continuance of such emergency, the Commissioner may establish procedures to be followed, issue necessary orders and take such actions as may be necessary for the health or the safety of the City and its residents. Such procedures, orders or actions may include, but are not limited to, 2 exercising the Board's authority to suspend, alter or modify any provision of this Code pursuant to subdivision b of section 558 of the New York City Charter, or exercising any other power of the Board of Health to prevent, mitigate, control or abate an emergency...



**NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE**

Ashwin Vasani, MD, PhD
Commissioner

Maura Kennelly
Deputy Commissioner

Gotham Center
42-09 28th St.
CN33
Long Island City, NY 11101

November 14, 2023

The Honorable Gale A. Brewer
New York City Council, District 6
563 Columbus Avenue
New York, NY 10024

Dear Council Member Brewer,

Thank you for your August 11, 2023, letter in which you raised concerns about the proliferation of “unlicensed cannabis shops” across New York City. The Department of Health and Mental Hygiene shares your concerns that stores are offering cannabis when they do not have the required New York State (NYS) license and sell cannabis that has not been state-approved.

In your letter, you suggest that the Department exercise its authority to “shutter unlicensed cannabis stores” because these stores are “food service establishments” under New York City Health Code Article 81 and that the Health Commissioner could declare a public health emergency to provide the legal authority for Health Department enforcement action to shut the shops down.

We appreciate these suggestions and have considered them. However, given the NYS cannabis legal framework, the NYC Health Code, and the facts before us, the Department does not believe it is appropriate to conduct the enforcement you suggest. Importantly, the typical “cannabis shop” is not a food service establishment regulated under Health Code Article 81, in that food generally is not prepared and offered for service at the site of the business. Accordingly, the products being sold in these shops are not generally regulated by the food establishment provisions of Article 81 of the Health Code. More generally, given that the sale of so-called “edibles” is generally a component of a larger cannabis business, enforcement efforts in this area are more appropriately coordinated and implemented through other City and State agencies with broader licensing or police power jurisdiction over “smoke shops” and their products.

We would like to underscore that the Department takes seriously its charge to protect New Yorkers from the harms of adulterated food and has diligently enforced Health Code prohibitions with respect to food service establishments that have added unauthorized substances, including cannabis, to food. In 2019, for example, the Department announced enforcement in food service establishments of Health Code

protections from food adulterated by CBD. We are currently actively enforcing against any food service establishment found to be adding cannabinoids—THC or CBD—to its food by issuing summonses, discarding adulterated food, and issuing Commissioner's Orders to cease and desist the unlawful practice and, in some circumstances, immediately close. We will padlock establishments that defy our closure order. The NYC Sheriff has been exceptionally supportive of these actions and is working closely with us.

The Department is likewise enforcing Smoke-Free Air Act (SFAA) prohibitions on food service establishments that allow patrons to smoke cannabis. The City Council enacted this landmark local law more than 20 years ago, broadened SFAA protections to include cannabis in 2017, anticipating legalization, and just recently further expanded protections as part of the legislation making outdoor dining permanent.

Further, with respect to your suggestion that the Health Commissioner declare a public health emergency, a declaration of a public health emergency is not at this time justified as "necessary to protect the public health against an imminent or existing threat" under Health Code § 3.01. The standard for declaration of a public health emergency under the Health Code is not currently supported by our data on cannabis-related emergency department visits and poison center calls, or other information, and in light of the State's regulation of licensed cannabis sales, and that there are other existing law enforcement authorities with jurisdiction to take action against the unlicensed sale of cannabis.

The Department conducts timely and comprehensive surveillance of the prevalence of cannabis use and associated health harms among youth and adults. Data are collected through surveys of cannabis use patterns, syndromic surveillance of cannabis-related emergency department visits, and tracking of cannabis-related poison center calls. Syndromic surveillance of cannabis-related emergency department visits show that these visits currently account for a small proportion of drug-related emergency department visits citywide and calls to the Poison Center do not point to exposures attributable to unlicensed outlets. We will continue to analyze our surveillance data and closely monitor cannabis-related morbidity in New York City, and we will consider any appropriate action as evidence changes.

As the State implements its cannabis law in NYC, the Department will act within the appropriate scope of its authority under the Health Code and the SFAA to reduce harms of cannabis to the public and will always be vigilant to respond to new or emerging public health threats.

Thank you for the opportunity to review your concerns. The Department agrees that a careful implementation of all aspects of cannabis legalization is critical to the health and wellbeing of New Yorkers.

Sincerely,



Maura Kennelly
Deputy Commissioner

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