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THE COUNCIL  
OF  
THE CITY OF NEW YORK  
**GALE A. BREWER**  
COUNCIL MEMBER, 6<sup>TH</sup> DISTRICT, MANHATTAN

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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.<sup>1</sup> Section §81.39 authorizes padlocking of any Food Service Establishment if continued operation is an imminent hazard to public health.<sup>2</sup>

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<sup>1</sup> §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.

<sup>2</sup> §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.”<sup>3</sup>

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, flowing style.

Gale A. Brewer

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<sup>3</sup> §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...