



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

Ashwin Vasan, MD, PhD  
*Commissioner*

November 14, 2023

**Maura Kennelly**  
*Deputy Commissioner*

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

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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