



THE COUNCIL
OF
THE CITY OF NEW YORK

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December 9, 2022

Chris Alexander, Executive Director
New York State Office of Cannabis
Management
Harriman State Office Building Campus,
Building 9
Albany, NY 12226

Keechant L. Sewell, Commissioner
New York City Police Department
1 Police Plaza
New York, NY 10038

Preston Niblack, Commissioner
New York City Department of Finance
One Centre Street, 22nd Floor
New York, NY 10007

Sheriff Anthony Miranda
New York City Sheriff's Office
30-10 Starr Avenue
Long Island City, NY 11101

Vilda Vera Mayuga, Commissioner
New York City Department of Consumer and
Worker Protection
42 Broadway
New York, NY 10004

Matthew Fraser, Chief Technology Officer
New York City Office of Technology &
Innovation
2 MetroTech Center, P1
Brooklyn, NY 11201

Commissioner Kevin Kim
New York City Department of Small Business
Services
Cannabis NYC
1 Liberty Plaza, 11th Floor
New York, NY 10006

Dear Executive Director Alexander, Commissioner Sewell, Commissioner Niblack, Sheriff Miranda,
Commissioner Mayuga, Chief Technology Officer Fraser, and Commissioner Kim,

I write to express concerns over unlicensed cannabis sales in my district and throughout New York City. Like many on the Upper West Side, I support the Marijuana Regulation and Taxation Act (MRTA) and consider the legislation, with its robust social equity provisions, the strongest cannabis law in the country. However, absence of its enforcement in these early days threatens to undermine the law's intent before the legal market even takes shape.

In addition to immediate public health risks associated with selling unregulated ingestible and combustible cannabis – including to New Yorkers under age 21 – I am concerned that the free-for-all environment will become entrenched and disincentive sellers from seeking licensure at all. Licensed sellers will be forced to compete with unregulated (presumably less expensive) stores, and the city and

state will miss out on much needed tax revenue—tax revenue also meant to fund the MRTA’s laudable social equity initiatives. I have also heard reports that unlicensed retailers are falling prey to armed robbery.

I recently sent my staff to canvas every block of the council district to determine the number of illicit cannabis retailers (the district encompasses most of the Upper West Side from 108th Street to 54th Street). They visited 61 storefronts that sell tobacco products or smoking accessories and found cannabis is available at 26 locations (twenty-six!), from bodegas and delis to smoke shops and newsstands. All but four of the retailers also sell tobacco products and/or electronic flavored and unflavored “vaping” products (more than a few also lack licenses to sell tobacco, according to the City’s Open Data Portal). As you know, only four retail cannabis licenses have been awarded for all of Manhattan, and 36 for all of New York State. None of these retailers have opened for business.

There is no ambiguity in the law: it is illegal to sell cannabis without a license. The ambiguity lies in who can and should enforce it. It is my understanding that the NYC Department of Consumer and Worker Protection (DCWP) does not have the authority to enforce cannabis-related regulations; the NYPD has reportedly directed precincts not to enforce cannabis-related laws; and the New York State Office of Cannabis Management (OCM) only has authority to issue licenses and intervene with retailers that are already licensed. It is my understanding that further legislation will be introduced in Albany to give OCM the power to enforce the law, which I support.

The NYC Department of Finance (DOF) and the NYC Sheriff’s Office regularly inspect tobacco retailers for untaxed cigarettes and, during the course of these inspections, have the authority to seize illegal products and issue civil violations. NY1 reported in October that during the course of a tobacco inspection, the NYC Sheriff’s Office “seized marijuana and bags filled with illegal tobacco products like vapes and untaxed cigarettes from a smoke shop on Staten Island.” Sheriff Miranda stated at the time: “These are routine inspections of stores who are selling illegal cigarettes and other tobacco products, and most of the time, when we do these inspections, we also find other illegal items in the stores, from vaping products to flavored products such as marijuana pills.”

To be clear, I do not want to see unlicensed cannabis sellers enter the criminal justice system for anything less than severe criminal conduct that threatens public safety, but the need for consistent seizure and civil penalties to curtail unlicensed sales is apparent. While OCM and the City of New York work to codify MRTA enforcement roles and responsibilities, I ask that DOF and the Sheriff’s Office expand the use their existing authority over tobacco retailers to seize cannabis products and issue civil penalties. I also ask that DOF, the Sheriff, DCWP, and NYPD coordinate on these efforts to target retailers that are selling tobacco and vaping products without a tobacco license. DCWP has clear and robust enforcement powers in such instances.

Additionally, I urge all addressees to identify more measures to protect the emerging legal program, such as revocation of Certificates of Registration at retailers with repeat offenses, a public information campaign to educate consumers on why buying from a licensed seller matters, and the use of public nuisance laws to hold knowledgeable landlords accountable for illegal cannabis retailers operating in their buildings (which was successful in curtailing the sale of counterfeit goods on Canal Street).

I also ask that NYC Office of Technology & Innovation (OTI) coordinate with OCM to implement a

consistent way for constituents to submit complaints through 311 to ensure their concerns are being documented and directed to the proper authorities. Depending on the operator, constituents report being told to register complaints with DCWP, the NYPD, 911, and/or OCM. There must be clarity on how to triage all cannabis-related complaints. It would also be helpful for OCM to share complaint information with the City of New York.

I also ask for information and clarity on two things:

1. We are all cognizant of extreme municipal vacancies and the impact on daily government operations. At each of your agencies, what is the current capacity for inspections of tobacco and cannabis retailers in the five boroughs? How many vacancies exist for relevant inspection and oversight staff? What is the status of so-called secret shopper programs, including those that utilize young people? What resources are needed to make enforcement more robust?
2. Regarding the siting of cannabis dispensaries: An October 11, 2022 article in Vox reported that Conditional Adult-Use Retail Dispensary (CAURD) license recipients will get access to turnkey storefronts made possible by a \$200 million social equity cannabis fund. How will these storefront locations be determined and how do they align with equity and saturation goals? When an individual wins an award, what is the process to find a storefront? What role will the Community Boards play in the process?

Thank you for your prompt attention to this matter. While walking to a City Council hearing this week I came across a brand new smoke shop at 253-255 Broadway, which is directly across from City Hall. The store opened on December 5, according to the clerk, and stocks a sizable variety of cannabis flower, concentrate, and edibles (as well as vape tobacco products). The City of New York must be a strong partner to OCM for the successful rollout of the MRTA.

I look forward to your 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
Chair, Committee on Oversight and
Investigations