

Written Public Comments Submitted to the Department of Finance
Unlicensed Cannabis Business Rules

1. Manhattan Community Board - Email– 7/31/2024

Re: Proposed rules relating to the City Sheriff's enforcement of unlicensed cannabis activity

Dear Mr. Baldwin:

The Cannabis Task Force (CTF) of the State Licenses and Permits Committee of Manhattan Community Board Five (CB5) wishes to express our appreciation for the proposed "Rules Related to Unlicensed Businesses Selling Cannabis" and make additional recommendations based on input the CTF has received during public hearings, community engagement, and ongoing discussions with cannabis license applicants within our district.

The persistent groundswell of more than 3,600 illegal cannabis operations across New York City disrupts businesses and poses a significant risk to the public health and safety of residential life and the public at large, including potential harm to consumers. As such, for the proposed permanent section 42-04 of Title 19 of the Rules of the City of New York, we submit the following input for consideration:

- (Subdivision a) Ensure the definitions of the terms "public youth facility," "school," and "place of worship" are truly inclusive of the populations the law intends to protect.
- (Subdivision c) Allow for public notice and comment as part of the hearing process administered by the Office of Administrative Trials and Hearings (OATH).
- (Subdivision e) Include and prioritize enforcement against illegal cannabis operations in or near (1) residential and mixed-use properties, (2) harm reduction facilities, and (3) the proximity-protected locations of schools, youth facilities, and places of worship.
- (Subdivision e) Redefine "straight-line measurement" to mean "walking distance" when determining proximity between cannabis operations and facilities.
- (Subdivision e) Enable informed and expedited reporting of violations by the public and timely response to such reports by law enforcement.

Definitions (subdivision a)

Public youth facility. As the intent behind setting a proximity distance requirement from such a location is to prevent exposure of cannabis products and use to minors who are seventeen (17) years of age or younger, to duly serve this purpose, a public youth facility should not be required either to be owned by a governmental entity and/or to have a primary purpose of serving minors, as long as it serves a considerable population of minors. This updated definition would allow for privately owned facilities that serve minors to be included (e.g. youth theaters and children's museums), as well as facilities that serve various populations inclusive of children and adolescents (e.g. public parks and libraries, which Cannabis Law did originally include as examples of "community facilities" from which operations should be distanced).

School. By the same logic as above, to protect minors, a daycare should also be considered a school if it is not considered a public youth facility. Meanwhile, we are pleased that the City recognizes that a school should not need to occupy a building exclusively used as such to have proximity protection, as we are aware that standalone school buildings are less common in our mixed-use district, particularly with regard to charter schools, which serve an estimated fifteen percent (15%) of students in the City.

House of worship. As it follows, a house of worship should also not be required to occupy its own building, as such a requirement is similarly antithetical to the mixed-use nature of our district and inevitably favors larger, legacy institutions over smaller and/or newer congregations that may also serve more diverse populations. An example of the latter in our district is the Congregation Beit Simchat Torah, a non-denominational, pluralistic, progressive LGBTQ+ Jewish synagogue and the world's largest LGBTQ synagogue, which occupies the first three stories of The Cass Gilbert, a luxury condominium and New York City designated landmark located at 130 W 30th St. While the proposed rules do not currently include a definition for a house of worship, it is mentioned as a proximity protected location, and thus we feel it important to include and to note how the State definition of the term is insufficient for our localized needs.

Allowing for Public Input in OATH Hearings (subdivision c)

In cases where a civil summons leads to a hearing before the City Office of Administrative Trials and Hearings, we request that the community board is notified of the scheduled event and the public is given the opportunity to submit comment at or ahead of the hearing.

Prioritizing Enforcement Based on Location Proximities (subdivision e)

As the City Sheriff considers the totality of factors set forth in subdivision 4 of section 138-b of the Cannabis Law to determine whether conduct poses an imminent threat to public health, safety, and welfare, provided that any factor specified in such subdivision 4 shall be sufficient on its own to determine an imminent threat, we request that in addition to the proximity of the building or premises to schools, houses of worship, and public youth facilities as stated in paragraph e, the proximity to the following is also taken into account:

Residences. Addressing proximity to residents in residential or mixed-use buildings will be important in preserving, protecting, and, perhaps in some cases, restoring quality of life for residents, especially those with children and adolescents who live with them.

Harm reduction facilities. As cannabis has its own risks of negative health effects and dependency, it goes against the interest of public health, safety, and welfare to allow cannabis operations to exist within proximity to harm reduction facilities where individuals are attempting to address their life-threatening drug addiction issues. Furthermore, CB5 has also received claims that the proliferation of illegal operations in proximity to a number of harm reduction facilities between Sixth and Eighth Avenues in the area between Penn Station and Bryant Park attracts additional individuals who loiter outside such operations hoping to intercept and take advantage of would-be customers and offer them more serious illicit substances to purchase.

Both location types are considered in CB5's Guidelines on Cannabis Licensing (see attached), which were formed with community input and are applied in our consideration of the appropriateness of legal cannabis operations within our district. Therefore, we urge the Department of Finance to have the City Sheriff consider them as well, especially as it has already been suggested that the illegal nature of the businesses subject to this proposed rule warrants greater scrutiny, given the more serious risks that such businesses pose to our community.

Proximity Distance Measurements (subdivision e)

While the State dictates that most measurements should be taken on a straight line between an operation and a facility that are on the same road as one another, the City's density and particularly that of our district makes it so that an operation could literally be around the block from or back-to-back with a school, public youth facility, or house of worship. Therefore, we recommend that a "straight-line measurement" is reinterpreted to imply the "walking distance" of the shortest route achievable between two locations via unobstructed straight-line paths. Though potentially more complicated to measure, walking distance achieves in our district what we presume the straight-line measurement intends, which is to establish a protective distance around the places that may be sensitive to the presence of cannabis and respect the people who frequent such places.

Improving Responses to Violation Reports (subdivision e)

Lastly, in order to assist the City Sheriff with determining whether conduct poses an imminent threat to public health, safety, and welfare, residents have requested the ability to submit reports of illegal activity more efficiently and to have their reports responded to in a more timely manner. Education for the community regarding how to recognize legal and illegal operations and report the latter would also complement such efforts.

Despite CB5 urging residents to report illegal cannabis operations through 311 and/or the Office of Cannabis Management's (OCM) Incident Report Form, they have reported feeling frustrated with the delayed or lack of response to their efforts.

In addition, residents and businesses have reported seeing illegal cannabis operations closed, shutdown, and padlocked, but then reopening and operating in the evenings, by cell phone, and in new locations. The ability to report incidents and have them addressed in real time may support effective public monitoring of illegal cannabis operations while also providing information as to whether a business has been permitted to reopen given that its illegal conduct has been abated.

This timely opportunity to respond with comments also comes with a request for ongoing communication with community boards. Please advise us of any decision or action taken in response to these comments. Thank you for your consideration.

Sincerely,

Katherine Ellington & Janice Yong

Manhattan Community Board 5

State Licenses and Permits Committee Chair, Cannabis Task Force

MANHATTAN COMMUNITY BOARD FIVE

GUIDELINES ON CANNABIS LICENSING

Manhattan Community Board Five ("CB5") hereby establishes these "GUIDELINES ON CANNABIS LICENSING" or "GCL" to govern the Board's consideration of all cannabis license applications within our district.

Distance

Any application for a cannabis license within CB5 may only be approvable provided that the proposed location is no less than:

- 1) 1,000 feet from an existing cannabis establishment; and
- 2) 500 feet from a school; and
- 3) 500 feet from a community facility; and
- 4) 200 feet from a house of worship; and
- 5) 500 feet from a harm reduction facility; and

And for retail establishments only, the following additional distance requirements:

- 6) 500 feet from a park or a public space; and
- 7) 1,000 feet from a playground; and

Noise and Odor Mitigation

Cannabis applicants shall provide noise and odor mitigation plans demonstrating how their establishments will minimize noise and odor pollution. All applicants must minimize noise and odor pollution and its adverse impact on the community; and

Hours of Operation

No establishment for the retail sale, delivery, or on-site consumption of cannabis shall operate later than 2:00 a.m.; and

No establishment for the on-site consumption of cannabis, which is located within 500 feet of a residence, shall have hours of operation later than:

- Sunday through Wednesday nights: closure no later than 1:00 a.m.; and
- Thursday through Saturday nights: closure no later than 2:00 a.m.; and

Restricted Licensing Areas

When a proposed cannabis license is located within any existing or future “Restricted Licensing Area” of CB5 (an “RLA”), to the extent that any requirements applicable within such RLA are more restrictive than those provided in these guidelines (including but not limited to hours of operation, size of the premises, etc.), the application shall comply with the more restrictive requirements of such RLA; and

Outdoor Space

Consumption of cannabis products must not be permitted outdoors, including in sidewalk sheds, rooftops, terraces, and other outdoor areas within which the business operates; and

Community Engagement and Process

- 1) Cannabis applicants must provide a timely response to a questionnaire provided by CB5, providing information including but not limited to details about the proposed premises, the description of the proposed method of operation, hours of operation, product lists, operational plans, and other information requested in the questionnaire; and
- 2) Cannabis applicants shall engage with local co-op and condo boards, resident and block associations, business improvement districts and/or other community organizations within the vicinity as part of a good faith effort to preserve the quality of life of the surrounding residents, businesses, and other local stakeholders; and
- 3) Cannabis applicants shall correspond with members of CB5's State Licenses and Permits (SLAP) committee, respond to community concerns, and attend community

meetings and SLAP committee hearings as requested. CB5 cannabis licensee applicants must actively engage in this process, tailoring its method of operation as appropriate for the specific location being licensed; and

4) CB5 will evaluate applications in a fair and impartial manner utilizing these guidelines and the Method of Operations Approval Matrix included herein as Exhibit A; and

5) Cannabis applicants shall execute and deliver a legally-binding affidavit, whereby the applicant shall:

a) Represent, for each area of the proposed licensed premises (a) the square footage,

(b) the capacity, (c) the "method of operation," and (d) other details that the committee considers relevant; and

b) Agree to all conditions and stipulations as required by CB5 as a condition to approval of the application; and

c) Incorporate all the conditions and restrictions into the "method of operation" included as part of the cannabis license application submitted by the applicant to the Cannabis Control Board, a copy of which shall be simultaneously submitted to CB5.

2. Bruce Sterman – Email -- 7/31/2024

RULE TITLE: Rules Related to Unlicensed Businesses Selling Cannabis (Permanent Rule)

REFERENCE NUMBER: 2024 RG 056

Mr. Baldwin,

It is imperative that New York City, the Sheriff's Dept, the Dept of Finance, the Mayor, City Council, understand that the proliferation of unlicensed stores is not because independent entrepreneurs decided to open unlicensed cannabis stores in every borough of New York City.

It is the result of a business decision by a sophisticated not-for-profit organization with expertise in finance, real estate (leasing and construction), distribution, and warehousing.

These stores have a similar look (LED ringed windows, a neon cannabis leaf, the same selection of the paraphernalia, a sidewalk A frame sign, etc.), offering similar products (a wide variety of the same cannabis brands with CA labels), in prime locations near subway and bus stops.

Organized. Sophisticated. Flexible. Adaptive.

In response to my LinkedIn posting of the new regulations, their attorney Paula Collins wrote, "Unfortunately, they are already pivoting. They saw this coming and they had plans in place." \

That organization is YAMA, the Yemini American Merchants Association. Attached is the documentation (part A here, and part B in a subsequent email) I have collected over the past year that substantiates that conclusion.

Bruce Sterman

3. Suki Cheong – Email -- 7/31/2024

There needs to be a way to enforce against persons selling unlicensed cannabis products on the sidewalk, particularly when it is happening outside an establishment that has been selling unlicensed cannabis and has been the subject of enforcement actions.

Furthermore there should be a follow up period of a year following an enforcement action where the sheriff or NYPD is authorized to conduct spot audits/undercover buys at a site which has claimed to have abated the nuisance. Don't forget to check the basements! We are seeing sites that have been shut down by the sheriff and have their gates down during the day but their lights on at night, or that have changed store fronts and signs but still have drug activity on the sidewalk outside. Persistent illegal activity after an enforcement action should lead to a presumption that activity has not been abated, has continued with the knowledge of the property owner and that closure orders, vacate orders and fines should remain in force.

Finally please have a procedure to work with the NYPD to get information - street cameras, patrol observations etc

Thank you for your consideration

One further comment - the rules defining proximity to schools, public youth facilities and houses of worship should be clarified to include licensed daycare facilities and pre-K facilities which accept members of the public as customers .

4. Melissa Alvarado – Online Comments on DOF Public Hearing Website – 7/27/2024

How much longer will this last?

What are the steps when you go into a shop?

5. TaxFax -- Online Comments on DOF Public Hearing Website – 7/30/2024

Will these rules apply to businesses owned by city council members as well?

DOF has a history of not enforcing about elected officials who break laws. For example, City Council Member Darlene Mealy hasn't paid taxes since 20202 – but DOF does nothing.

Will DOF also ignore violations of this rule for elected officials as well?

6. Office of Council Member Carlina River – Email – 7/22/2024

Re: Rulemaking Concerning the City Sheriff's Enforcement of Unlicensed Cannabis Activity

Thank you for the opportunity to submit testimony regarding the Department of Finance's proposed rule related to the City Sheriff's enforcement of unlicensed cannabis activity. I support the proposed rule to protect quality of life and public safety in my community and citywide.

The legalization of cannabis and the associated rules and laws in New York were a vital first step in recognizing the decades of unequal enforcement of drug laws that disproportionately impacted communities of color. The Marijuana Regulation and Taxation Act was designed to provide redress and create a sensible framework for an adult cannabis market regulated and taxed by the state. Unfortunately, the Office of Cannabis Management (OCM), created to oversee this process, has been beset by an ever-increasing backlog of applications that have resulted in the proliferation of unlicensed cannabis dispensaries across the city. These dispensaries do not comply with state regulations meant to protect health and life, and some have been found to deliberately target and sell to minors and host other illegal activity.

The City must take swift and decisive action to close these storefronts that threaten public health and undermine a market meant to advance social equity. The proposed rule will enhance enforcement powers that allow the closure of unlicensed dispensaries citywide.

I commend the Sheriff's office for their diligent partnership in closing several locations in Council District 2, and look forward to the administrative code being amended to protect our communities from the harms of unlicensed cannabis dispensaries.

7. Marc Scolnick – Email – 7/8/2024

I submit the following comment on Proposed Rule 42-04 to Chapter 42, Title 19 of the Rules of the City of New York:

It is fair to add a requirement after the Proposed Section 3(b)(5) that the Sheriff's Office explain its reasoning for denying a petition to unseal. There is already a requirement that the Sheriff's Office explain what additional documentation is necessary to render a decision if there is insufficient documentation submitted. Where there is sufficient information to make a determination, and that decision is to sustain the closure order, respondents and owners should at least know whether there is anything else they can do to reopen. This will allow both respondents and owners to figure out how to proceed as business owners to resolve the other issues that arise as a result of enforcement actions.

8. Leslie Rodriguez – Email – 7/7/2024

Will a plan be in place to pair the ceased location with caurd and see licensee's. This will remedy the solution. Please let me know who to contact to acquire these padlocked fully operational dispensary we so desperately need. Thank you.

9. Denise Johnson – Email – 6/25/2024

Yes it should include other legal entities that can come and close illegal shops. There should also be a limit on how many legal shops are in the neighborhood and those that live there should have first dibs on a site. My name is Lillian swain and I am a member of community board9. Ty

If you would like to review the original submission of any comment, including attachments, please email dofrules@finance.nyc.gov
