

CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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JEFFREY LEFRANCOIS
Chair

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District Manager

February 10, 2023

Chris Alexander
Executive Director
New York State Office of Cannabis Management
P.O. Box 2071, Albany, NY 12220

RE: Comments on Proposed Part 118, 119, 120, 121, 123, 124, 125, and 131 (Adult-Use Cannabis Regulations)

Attention New York State Office of Cannabis Management:

At its regularly scheduled General Board Meeting held in a virtual format on Wednesday, February 1, 2023, Manhattan Community Board No. 4 passed the following Letter of Comments re: **Proposed Part 118, 119, 120, 121, 123, 124, 125, and 131 (Adult-Use Cannabis Regulations)** (hereinafter the “Adult-Use Regulations”) by a vote of: **41** in favor, **0** opposed, **0** abstentions, and **0** present not entitled to vote:

Pursuant to Article 2 of the State Administrative Procedure Act (“SAPA”), Manhattan Community Board 4 (“MCB4”) is submitting comments during this public comment period on draft regulations published by the New York State Office of Cannabis Management (“OCM”), proposed in accordance with the Marijuana Regulations and Taxation Act (“MRTA”), signed into law on March 31, 2021, legalizing adult-use cannabis (also known as marijuana, or recreational marijuana in New York State).

In addition to MCB4’s following comments on the proposed regulations for adult use of cannabis the board believes enforcement of illegal operators continues to be a serious problem. MCB4 has been on record for highlighting this issue early and continues to work with local enforcement agencies to resolve this issue.¹ MCB4 understands that while OCM is not the only enforcing authority of unlicensed and/or illegal operators, we believe that OCM has a unique role and background in the management of this new controlled substance and should play a leading role in the coordination of enforcement efforts.

MCB4 supports the MRTA’s goal of creating social and economic equity by encouraging small

¹ See <https://cbmanhattan.cityofnewyork.us/cb4/wp-content/uploads/sites/10/2022/08/13-BLP-Letter-to-Office-of-Cannabis-Management-re-Illicit-Cannabis-Dispensaries.pdf>

businesses and communities disproportionately harmed by disparate drug enforcement to participate in this new industry. In furtherance of this laudable objective, and to ensure that dispensaries and the products they sell are safe and not targeted to those under twenty-one years of age, MCB4 supports the promulgation of a sophisticated regulatory structure, including standards for production, manufacturing, packaging, and advertising. Likewise, much like liquor licenses, MCB4 believes community input should be an “essential part”² of OCM’s licensing process for dispensary and on-site consumption lounge applicants. Accordingly, MCB4’s Cannabis Task Force provides the following comments on the Adult-Use Regulations:³

- § 119.2 Authorizations for Municipality Rulemaking
 - **Recommendation:** § 119.2 should allow for greater flexibility for the municipality or community board (*see* New York State Consolidated Laws, Cannabis Law, Article 4 § 76) (hereinafter “Cannabis Law Section 76”) in recommending time, place and manner restrictions to the Cannabis Control Board (“CCB”). It is important that dispensaries and on-site consumption lounges are sited and operated in a way that is sensitive to the needs and concerns of the local community. For example, § 119.4 already includes language similar to the State Liquor Authority’s rules proscribing the issuance of a dispensary license “on the same road and within 500 feet of school grounds.” Within that framework of community sensitivity, § 119.2 should conform to the State Liquor Authority’s licensing process. § 119.2 should make clear that municipalities or community boards can submit limiting stipulations on a licensee’s application that will be included as terms of the license, and that such terms will be enforceable if violated.
 - Additionally, § 119.2 should more explicitly allow municipalities and community boards to comment on—and as needed, propose restrictions to—delivery methods, and the operations and use of outdoor spaces.
 - As drafted § 119.2 does not allow for additional restrictions on delivery methods or operations. MCB4 is particularly concerned with the over-saturation of delivery services within our neighborhood, which can constitute a danger to pedestrians and delivery-workers alike. Among other recommendations, we have previously advocated for delivery services to provide safety training and equipment to delivery workers (such as helmets and reflective vests), that delivery workers be proscribed from making deliveries at speeds in excess of 20 mph, and that all bike parking be inside the premises.⁴ Accordingly, we believe that municipalities and community boards be given opportunity to comment on, and propose restrictions to, a dispensary’s delivery service plan [§ 123.10 (k)].
 - MCB4 has grave concerns about potential outdoor consumption at cannabis lounges. Although § 119.2 allows for additional restrictions on certain activities, including “odor” and “noise,” the regulation should explicitly provide authority for municipalities and community boards to submit stipulations limiting or curtailing outdoor consumption. MCB4 is mindful

² See <https://sla.ny.gov/community-input>

³ For ease of review, this letter does not include the text of the proposed regulations, which can be found at: <https://cannabis.ny.gov/system/files/documents/2022/12/adult-use-cannabis-proposed-regulations.pdf>

⁴ See <https://cbmanhattan.cityofnewyork.us/cb4/wp-content/uploads/sites/10/2022/02/17-TRANS-Letter-to-City-Council-re-Ultrafast-Grocery-Industry.pdf>

of the fact that the odors produced by the smoking of cannabis products can be transmitted over great distances. Unlike noise, it is difficult to predict with accuracy where or how far odors may travel within a given region. Therefore, it is imperative that community boards be given the time to receive community input and evaluate, which if necessary may include requiring stipulations that certain outdoor spaces be enclosed.⁵ Likewise, § 119.2 should provide a pathway for community members to share concerns regarding odors directly with the CCB after an on-site consumption lounge has begun operations.

- § 119.3 Notifications to Municipalities.

- **Recommendation:**

- Cannabis Law Section 76 provides that “in the City of New York, the community board . . . shall be considered the appropriate public body to which notification shall be given.”⁶ To avoid ambiguity and confusion, the term “municipality” in §§ 119.3 (a) and (b) should instead read “municipality or, in city of New York, the relevant community board,” or in the alternative, “municipality or community board.”
- Cannabis Law Section 76 requires that municipalities and community boards be given notice at least 30 days *before* an application is filed of the intent to file an application for a license.⁷ To avoid ambiguity and confusion, § 119.3 should, at minimum, reiterate this timing requirement, which is currently silent as to the timing of notice before an application is filed. Given the statutory advance notice requirement, the timetable proposed by §119.3 (providing that municipalities have 30 days from receipt of the notice to submit their opinions) appears unnecessarily truncated and would hamper the ability of municipalities and community boards to formulate their opinions with appropriate public notice and comment.
- § 119.3 should provide community boards with 60 days to express an opinion for or against a licensee’s application, with any proposed stipulations attached.
- § 119.3 should require applicants to provide the community boards with additional information beyond the minimal identifying information currently required by this regulation, including an applicant’s: (1) security plan [*see* §125.2]; (2) community impact plan [*see* §121.4] and (3) delivery service plan [*see* § 123.10 (k)]. It should also allow community boards to issue additional questionnaires to applicants that can be tailored to the specific needs or concerns of the local community. As written, § 119.3 does not allow for community input regarding this highly relevant information.
- § 119.3 should require that OCM provide municipalities and community boards with notice of the granting of licenses and the terms of those licenses.

⁵ For comparison, New Jersey requires the enclosure of *all* outdoor cannabis consumption lounges, regardless of the time, place, or manner of their operations. See <https://newjerseymonitor.com/2022/12/02/n-j-smokers-could-soon-light-up-in-consumption-lounges/>

⁶ See <http://public.leginfo.state.ny.us/lawsrch.cgi?NVLWO>:

⁷ See *id.*

- §121.1 Qualifications for a Social and Economic Equity Applicant
 - **Recommendation:** Except for the Community Impact Plan, MCB4 does not seek to review a licensee’s application to qualify as a Social and Economic Equity Applicant. MCB4 recommends that § 121.1 incorporate appropriate training and guidance to assist both applicants and community boards alike, including requiring implicit bias training for any municipal body or board reviewing cannabis license applications. This may also include community relations training for applicants, which would provide recommendations on outreach to community groups, religious organizations, schools, and other relevant community stakeholders.

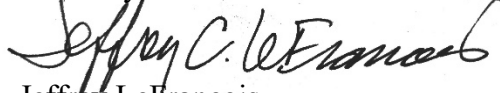
- § 120.13 (c) Reapplication after License Denial; §121.3 Continuing Duty to Disclose and Failure to Disclose Notification
 - **Recommendation:** §§ 120.13 and 121.3 should require that OCM provide community boards timely updates on suspension, revocation or denial of any license, with particular emphasis on the status of ownership and control.

- § 123.10 Retail Dispensary Operations
 - **Recommendation:** For the avoidance of doubt or ambiguity, § 123.10(k) should state explicitly that the only products a dispensary may deliver to customers are those products carried by said dispensary, and that the delivery of other types of products is strictly forbidden.

- Additional Comments
 - **Recommendation:** For greater transparency, the proposed regulations should include a Section creating a user-friendly online database listing all issued licenses and their terms. This will also assist community members in distinguishing legal from illegal operations.

Thank you for your consideration of these comments.

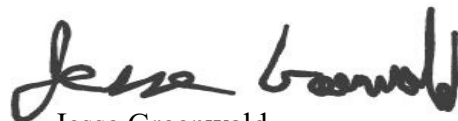
Sincerely,



Jeffrey LeFrancois

Chair

Manhattan Community Board 4



Jesse Greenwald

Chair

MCB4 Cannabis Working Group

- cc: Hon. Brad Hoylman, New York State Senate
 Hon. Linda Rosenthal, New York State Assembly
 Hon. Tony Simone, New York State Assembly
 Hon. Robert Jackson, New York State Senate
 Hon. Liz Krueger, New York State Senate
 Hon. Mark Levine, Manhattan Borough President
 Hon. Erik Bottcher, City Council