

**Joint -- Senate Subcommittee on Cannabis**

Chair: Senator Jeremy A. Cooney

Public Hearing to examine issues in the New York State market

Related to consumer accessibility and retail sale of legal adult-use cannabis

October 30, 2023

Also meeting:

**Senate Standing Committee on Finance**

Chair: Senator Liz Krueger

**Senate Standing Committee on Agriculture**

Chair: Senator Michelle Hinchey

**Senate Standing Committee on Investigations and Government Operations**

Chair: Senator James Skoufis

*Remarks by Paula Collins, EA, Esq., a Cannabis Tax Attorney based in New York City. In addition to being a member of the New York State Bar, Collins holds the highest tax credentials offered by the IRS, and is a co-founder of the New York Consortium of Cannabis Accountants. She serves on the International Cannabis Bar Association's Ethics Committee, and is an adjunct professor of cannabis law at the Elisabeth Haub School of Law at Pace University in White Plains.*

**Introduction**

The current license application portal will close on the 993rd day after the MRTA was signed into law. It is unlikely that we will exceed 30 open, licensed retail dispensaries in New York any time before the Second Quarter of 2024.

In the meantime, the unlicensed shops continue to flourish. While you might have a false sense of security in the enforcement capabilities passed by the legislature in May 2023, you should know that there is trouble on the enforcement front.

**Regarding Enforcement Raids**

Numerous issues abound under both federal and state constitutions when it comes to enforcement against the unlicensed pot shops. A recent NY Appellate decision in *Owner Operator Indep. Drivers Ass'n v. N.Y. State Dep't of Transp.*, 2020 N.Y. Slip Op. 34831 (N.Y. Sup. Ct. 2020) was ruled on in June 2023, thus superceding the May 2023 legislation that brought enforcement powers to OCM. The court held that a warrantless regulatory inspection is *per se* violative of the 4th Amendment of the U.S. Constitution.

These raids hark back to the Rockefeller-era of drug enforcement. The treatment of employees during the raids by cadres of “tax police” is egregious. Members of Department of Taxation and Finance, working alongside OCM Enforcement officers, do not identify themselves by name (in

violation of NYC *Right to Know* laws) as they storm in decked out in bullet proof vests, handcuffs, and firearms. Suspects are not free to go, and they not free to speak with their attorneys. The enforcement raids exceed the limits of regulatory searches, which could be just as easily conducted from a state employee seated at a laptop in a cubicle anywhere in the state. We do not need the shock-and-awe of the enforcement raids in the year 2023 in a progressive state like New York.

### **And what's going on with those enforcement hearings?**

According to OCM, there have been 270 enforcement actions, but only 26 trials, with 10 matters still pending. A question that comes to mind is this: Why is there a tremendous disparity in numbers between the violations issued and the hearings?

“It was never OCM’s mission to do this type of enforcement,” Chris Alexander said [in the press](#) on Oct 27, 2023 “I want to be very clear that the strategy has not worked.”

Last week, OCM began issuing Notices of Withdrawal of charges. Matters that were scheduled for hearings, some of which had progressed to the point of sharing evidence and exchanging motions and responses, were simply withdrawn by OCM attorneys.

Friday, October 27, 2023, *The City* reported that the Office of Cannabis Management had placed an indefinite [pause on hearings for enforcement actions](#).

Nonetheless, enforcement actions have continued. The legal question is this: can the government enter a place of business, seize product, detain employees, and post a government warning sign, without offering a hearing? Doesn't that violate procedural due process rights, even at the state level under SAPA § 301?

### **Just how many unlicensed cannabis shops are there?**

By my math, there are approximately 30,000 throughout the state. I arrive at that figure by counting one shop for each of the 2300 city blocks in Manhattan + [2300 x 4 x 80% for Brooklyn, Bronx, Queens and Staten Island] = 9,660). Add to that the shops in Buffalo, Rochester, Syracuse, Ithaca, Binghamton, Albany, and other mid-sized cities. Then there are the rural areas. Several semi-rural areas have 3-4 shops in towns of fewer than 20,000 people. It is not a stretch to say that there are we could take the figure from NYC and add two times as much, for a figure that approaches 30,000.

Meanwhile, OCM projects that they will issue 1500 new licenses in this current application window. Even if combined with the 470-something CAURD licensees (let's just call it 2,000 retail dispensaries statewide) these numbers will pale by comparison to the some 9,660 unlicensed shops in NYC, or 30,000 throughout the state.

And those 30,000 are just the unlicensed shops with signs on them. There are art galleries, garages, book stores, delis, coffee shops, and more that are the “go-to” place in the neighborhood for weed, even though they do not hit the radar for enforcement because they do not have a neon pot leaf. Unlicensed cannabis activity continues when you include the countless people making baked goods, gummies, candy bars, and infused dinners, plus who knows how many unlicensed cultivators.

### **NYC Public Advocate Jumaane Williams has called for a Transition License.**

“One other consideration in addressing this growing issue could be the legitimization of certain unlicensed retailers via transitional licenses, which would ultimately place them under state regulation and ensure health and safety guidelines are followed, and of course, that there are no sales to underage individuals,” continued the Public Advocate. “This expansion could be in collaboration with those who have been part of the legacy cannabis market, with a goal of directing profits and funds back in the hands of individuals and communities harmed by the so-called War on Drugs.”

Indeed – a transition license could provide an on-ramp for certain business owners who can prove themselves capable of working within the government’s regulations.

### **How would a transition license work?**

**Step one:** Allow a 120-day window for unlicensed smoke shop owners to log in, acknowledge their legal name and the address of their shop. Before moving to the next screen, registrants will submit a \$25,000 fee to earn the right to engage with state officials in a pathway towards licensure. With this step, any possibility of task force raids against that business will be stopped until the discernment process outlined in the steps below has had a chance to play out.

Not all shop owners will jump into the regulated market. My experience is that most unlicensed shop owners will jump at the chance to get licensed. But hear me out. Here are some numbers I calculated when I thought there were 10,949 shops.

If just 25% of the estimated 10,949 unlicensed retail shops did this first step, their \$25,000 fees would add up to \$68,431,250 in funds – right away. (10,949 x \$25,000 x 25%) Not bad. We can now afford to have an OCM this year.

**Step two:** After payment of the initial \$25,000 application fee, the shop owner will have 90 days to submit the following:

- Certificate of authority to collect sales tax
- Certificate of registration on the cannabis tax site

- Certificate of registration on a newly-created social equity tax site, which will result in an additional 4% tax on top of the 13% cannabis tax. This 4% will be in effect until the business owner is able to convert to a New York State Adult-Use Dispensary License
- Workman's comp policy
- Proof of registration with a payroll provider
- Letter of intent for services from accounting or tax professional (necessary to ensure accuracy and ethical reporting of taxes)
- Letter of intent for services from legal professional or nonprofit legal services provider (necessary to ensure accuracy and ethical reporting of all activity going forward)
- Evidence of two years of filed personal tax returns
- Evidence of two years of filed business tax returns (or less if the business has not been in operation for two years)
- A labor peace agreement
- A letter of intent from the landlord in support of the license application
- A Standard Operating Procedure (SOP) for Cash Management
- An SOP for chain of custody and/or testing of THC products
- An SOP for security of inventory
- An SOP for human resources (recruiting, hiring, training, firing, pay scale, benefits, opportunity for advancement)
- A plan for phasing out out-of-state products over the next 90 days
- LOIs from New York farmers and distributors to carry their products

This is a lot of work. Some of our initial shop owners will get discouraged and pack it in. Regulated cannabis is not for whimps.

**Step three:** The State of New York will then issue a two-year transitional/provisional license to operate a retail dispensary to those business owners who have completed steps one and two.

**Step four:** The transitional licensee has 90 days after the issue date to present themselves before the community board or municipality. An adjournment of that date is permitted only for reasons of prolonged illness or regional emergency. Any defects discovered by the community board or municipality must be cured or resolved within 90 days after that. If the community board or municipality entirely rejects the location of the shop, the business owner may apply to the Office of Cannabis Management for a variance which will supercede the local zoning restriction. Alternatively, the transitional licensee can apply for a 120-day continuance to find another location and gain approval from a community board or municipality. If you are worried that we are running out of time to get this program done within 365 days from the program

inception, then put a hard cap on it, which will encourage early adopters. Otherwise, be prepared for a few stragglers to extend this process for 18 months.

**Step five:** The transitional licensee will pay an additional \$25,000 every quarter for a total of 8 quarters over 2 years. That's a total of \$200,000 for the license.

**Step six:** After two years of continued compliance with steps one through five, the transitional license will convert to a regular New York State Adult-Use Retail Dispensary License. Again – no easy task. One of the most difficult things about moving from unlicensed to licensed is adjusting one's expectations for cash flow and learning that a certain amount of a shop's income goes to taxes.

Here are some things that we, as a state, will accomplish with the transitional license program:

**Markets for the farmers:** Better act soon here, guys. The farmers really can't hold on for too much longer without shops in which to sell their goods.

**Retail options for the medical patients:** You try going through each day with PTSD or excruciating pain, and having to choose between the higher prices in the licensed shops versus the more conveniently-located unlicensed shops.

**Keeping over 120,000 New Yorkers employed:** Each shop has at least 3 employees. Some shops have 40 employees. Conservatively, the state's estimated 32,847 unlicensed cannabis businesses employ over 120,000 men and women who support families and pump money back in to the economy.

**Enforcement:** Market the program as a "pay now or pay later" program. For those business owners who do not register to participate in this transitional/provisional license program, a few keyboard taps by a civil service worker in a cubicle in Albany will signal a message to a guy who comes out to the shop to lock it up. This is 2023 – not 1983. We don't need hordes of armed enforcement agents with their bullet proof vests sent out to conduct regulatory tax inspections.

**Instant revenues from the licensing fees:** If 25% of the estimated 10,949 unlicensed retail shops pay their first year's quarterly payments, we will have \$273,725,000. Isn't that so much better than spending \$5 million to send in the troops?

**Ongoing tax revenues:** With an almost-instant infusion of approximately 2,737 transitionally-licensed shops, ringing up \$20,000 in sales each day, and assessed 13% in cannabis taxes, will infuse \$213,486,000 into the state's tax coffers EACH AND EVERY MONTH. And remember, above I proposed adding a 4% surcharge to their tax regime for the period that they are not fully licensed to add an additional \$65,688,000, for a grand total of \$279,174,000 in additional tax revenues – earned just by offering a temporary license to just 25% of the existing pot shops.

Can we afford to NOT offer a transitional license? If you scoff at this proposal, I want you to be the one to tell communities that the state is broke and they have to cut back on programs.

Thank you for your support of New York Cannabis.

Sincerely,

A handwritten signature in blue ink that reads "Paula Collins". The signature is written in a cursive, flowing style.

Paula Collins, EA, Esq.