

To: New York State Office of Cannabis Management

Cc: [REDACTED] Acting Executive Director – OCM; [REDACTED] Director of Policy – Office of Cannabis Management; [REDACTED], Commissioner—NYC Dept. Small Business Services

From: [REDACTED], Senior Policy and Research Analyst – Cannabis NYC

Re: NYC Comments on NYS Proposed Regulation of Part 118.1 & Part 119.4 - Public Convenience and Advantage (PCA)

Dear OCM Team:

In this memo, please find New York City's comments on the [Proposed Amendments to Part 118 and Part 119- Public Convenience & Advantage Regulations](#).

As part of our continued commitment to a unified, collaborative approach to supporting the development of the legal cannabis industry, Cannabis NYC has coordinated the City's interagency comment package.

We appreciate the opportunity to provide feedback on these proposed amendments. This submission reflects the City's ongoing engagement with the regulatory process for Public Convenience and Advantage. In light of the state's decision to revise the regulations and reopen a 45-day public comment period, the same agencies that participated in the initial 60-day comment period have reaffirmed their positions and provided updated responses to the newly introduced changes.

The City shares the Office of Cannabis Management's goals of ensuring a successful legal cannabis market—one that promotes safe access for patients and consumers and fosters opportunity for justice-involved licensees to thrive.

The agencies contributing to these comments are listed below, with their corresponding abbreviations:

- Cannabis NYC, Department of Small Business Services (Cannabis NYC)
- NYC Department of Health & Mental Hygiene (DOHMH)
- NYC Administration for Children's Services (ACS)

We look forward to continuing to support the state's efforts to develop a thriving, equitable and sustainable legal cannabis market.

Respectfully,

[REDACTED]

[REDACTED]

Senior Policy and Research Analyst, Cannabis NYC

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Guidance for Review

In the interest of transparency and continuity, this memo includes two sets of comments:

1. **Initial Responses** submitted during the original 60-day public comment period, and
2. **Updated Responses** reflecting feedback on the revised regulations issued during the current 45-day comment period.

All previously submitted comments are labeled “Initial Response” and are followed by updated feedback, where applicable.

Please note: Page numbers in purple text throughout pages 3-10 of this document reference OCM’s publications of Proposed Amendments to Part 118 and Part 119 - [Public Convenience & Advantage Regulations](#), cited on page 1 of this document.

Part 118.1—Definitions

Part 118.1– Distance Requirements and Measurement of Distance Requirements

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Paragraph (88) of subdivision (a) of section 118.1 is repealed and paragraphs (89) through (107) are renumbered to (88) through (106) [(88) Public convenience and advantage standards mean factors used to determine whether or not the Board will grant a license to a licensee which will not result in over saturation of adult-use cannabis licensee]

Updated Response: We recommend that the definition for Public Convenience and Advantage (PCA) be retained and expanded. PCA is referenced eight times throughout the amended regulations and functions as a core standard for determining licensing exceptions under Section 119.4. Therefore, it should be clearly defined and consistently capitalized to reflect its status as a regulatory term of art. The definition should not only outline the factors used to determine whether a license will promote PCA, but also explain what PCA is. For example, what constitutes “public convenience” in this context? Is it access for consumers? And what is meant by “advantage”—economic development, social equity, or other public benefits? Clarity is especially important to distinguish whether PCA is solely focused on avoiding oversaturation and preserving market stability, or if it is also intended to ensure public access and benefit, particularly for underserved areas. A clear, comprehensive definition will support transparency, regulatory consistency, and informed decision-making by applicants, municipalities, and the public. (Cannabis NYC)

Part 119.4– Distance Requirements and Measurement of Distance Requirements

Part 119.4 – Distance Requirements and Measurement of Distance Requirements

(Page 1)

Subdivision (a) of section 119.4 is amended to read as follows: (a) The State of New York has a regulatory interest in the economic development of the cannabis market; ensuring that market growth proceeds in a manner that is reasonable, ordered, transparent; and the minimization of the collateral consequences resulting from inattention to the pace of growth. Therefore, [N]no retail dispensary license or microbusiness license shall be granted for any premises [which shall be]that is: (1) within a [1,000] 500-foot radius of a registered organization, ROD, or any other premises for which a retail dispensary license or microbusiness license has been issued, in a municipality having a population of 20,000 or more, [unless the Board has determined that issuing the license would promote public convenience and advantage;] except that distance requirements between a retail dispensary or microbusiness and registered organization shall cease to be a requirement past December 2023[.]; or (2) within a [2,000] 1,000-foot radius of a registered organization, ROD, or any other premises for which a retail dispensary license or microbusiness license has been issued, in a municipality having a population of 20,000 or less, [unless the Board has determined that issuing the license would promote public convenience and advantage;]

except that distance requirements between a retail dispensary or microbusiness and registered organization shall cease to be a requirement past December 2023[.]; or (3) between a 500 to 1,000-foot radius of a registered organization, ROD, or any other premises for which a retail dispensary license or microbusiness license has been issued, in a municipality having a population of 20,000 or more, unless the existing licensee has been operating for at least 9 months and the licensee or applicant seeking waiver has demonstrated to the board that issuing the license for the location would promote public convenience and advantage, except that distance requirements between a retail dispensary or microbusiness and registered organization shall cease to be a requirement past December 2023; or (4) between a 1,000 to 2,000-foot radius of a registered organization, ROD, or any other premises for which a retail dispensary license or microbusiness license has been issued, in a municipality having a population of 20,000 or less, unless the existing licensee has been operating for at least 9 months and the licensee or applicant has demonstrated to the board that issuing the license would promote public convenience and advantage, except that distance requirements between a retail dispensary or microbusiness and registered organizations shall cease to be a requirement past December 2023; or (5) within a 1,000-foot radius of two other licensees issued the same license type sought by the applicant, in a municipality having a population of 20,000 or more; or 3 (6) within a 2,000-foot radius of two other licensees issued the same license type sought by the applicant, in a municipality having a population of 20,000 or less.

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Subdivision (b) of section 119.4 is amended to read as follows: A licensee or applicant seeking to demonstrate that granting a license for its location would promote public convenience and advantage must submit a request in accordance with subdivision (c) of this section. The licensee or applicant must demonstrate to the satisfaction of t[T]he [B]oard [may determine] that approving a premises in such location [granting a license] would promote public convenience and advantage [as described in paragraphs (1) and (2) of subdivision (a) of this section by] based upon consideration of[ing], at a minimum, the following factors, which include: [(1) the number, classes, and character of other licenses in proximity to the premises and in the particular municipality or subdivision thereof; (2) evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies; (3) whether there is a demonstrated need for such license; (4) effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the premises; (5) the existing noise level at the premises and any increase in noise level that would be generated by the proposed premises; (6) the history of cannabis violations and reported criminal activity at the proposed premises; and (7) any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage of the community.] (1) the distance from any other existing approved licensee locations within: (i) 1,000 feet of the location in jurisdictions where the minimum distance between retail dispensaries is 500-feet; or (ii) 2,000 feet in jurisdictions where the minimum distance between retail dispensaries is 1,000-feet; (2) any geographic, structural, or topographic barriers that separate the proposed location from any existing retail dispensary locations, e.g., waterways, major roadways or highways, and significant travel distance required to get between the two locations; (3) the distance between the proposed location and any existing retail dispensary location, when measured

as a pedestrian or car would travel; (4) any factors unique to the proposed location, including any environmental or economic, or circumstantial considerations that justify its placement and/or a need for greater adult-use cannabis consumer access in the local area, including, but not limited to: (i) economic justification that highlights high consumer demand for additional retail dispensaries or retail microbusinesses in the area; (ii) the number of illicit cannabis dispensaries or former illicit dispensaries in close proximity to both the existing and proposed locations; 5 (iii) existing social and economic equity licensees within the applicable radius of the location; and (iv) any other factors submitted by the requestor.

- **Initial Response:** This amendment allows a retail or microbusiness licensee or provisional licensee to request an exception to location buffer requirements, specifically the distance from any other existing retail dispensary. Applying a blanket 1,000-foot buffer for municipalities with populations over 20,000 without accounting for NYC’s unique needs can create unintended barriers to equitable access and business viability. Entire city blocks in Manhattan and Brooklyn frequently exceed this population density. According to the 2010 Census, the average NYC neighborhood population is 42,358 with some areas surpassing 130,000.¹ High-density zoning classifications and business districts often accommodate tens of thousands of workers, students, and pedestrians daily. Walking distances and barriers such as heavy traffic, bridges, and waterways (*e.g.*, Newtown Creek, Bronx waterways) significantly impact consumer convenience. Therefore, a one-size-fits-all buffer is more restrictive and punitive in dense neighborhoods while failing to consider the lower density of areas like Cambria Heights in Queens. The state’s regulations should recognize these challenges to ensure practical and equitable application. Moreover, careful consideration is needed to avoid market saturation and cannibalization among retail dispensaries.

Cannabis NYC analyzes and evaluates retail economic viability based on the following:

- What market area is required to support a retail dispensary?
- How many customers are needed for sustainable operation?
- Does population density directly correlate with viable cannabis consumers in the area?

For example, age restrictions and consumer preferences limit the potential customer base. Over-concentration risks weakening business performance, particularly for Social and Economic Equity (SEE) licensees, while favoring larger operators.² Additionally, convenience and price are key drivers for transitioning consumers from the unlicensed to the legal cannabis market.³

NYC’s transportation hubs, universities, and business districts offer logical locations to meet consumer demand. Locations such as the Atlantic Avenue-Barclays Center area demonstrate how transit access creates a hub for cannabis consumers, making a strong case for public convenience and advantage exceptions. At the same time, the updated

¹ [NYC Population by Neighborhood | NYC Open Data](#)

² Whitney, B. (2024, October). *New York State Cannabis Program Retail Analysis*. Chief Economist.

³ [Cannabis consumers’ preferences for legal and illegal cannabis: evidence from a discrete choice experiment](#)

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economic justification criteria lack clarity. How does OCM define high demand for “adult-use cannabis consumer access”? Are NYC’s [Business Improvement Districts](#) (BIDs) or zoning clusters viable indicators? Establishing clear metrics and guidelines will help businesses assess their eligibility and avoid speculative investments in unsuitable locations.

The inclusion of geographic and structural barriers is commendable but requires refinement. NYC-specific barriers, such as divided roadways, rail embankments, and waterways, significantly impact pedestrian access. A standardized checklist of geographical and structural barriers that would be taken into consideration, akin to [NYC Planning’s waterfront rules](#) ([Article VI, Chapter 2](#), of the [Zoning Resolution](#)), would empower provisional licensees to assess locations upfront. This approach reduces costs and uncertainty while enabling the Board to confirm compliance efficiently. Additionally, allowing licensees to submit "other factors" offers flexibility but lacks definition. Overreliance on this provision without clear criteria risks inconsistency. Specifying additional factors—such as pedestrian convenience or public transit accessibility—would strengthen this provision and support transparent decision-making.

NYC’s unique urban landscape requires a nuanced approach to public convenience and advantage exceptions. We recommend:

1. Adopting flexible buffer requirements that account for population density, geographic barriers, and business hubs.
2. Establishing clear metrics for economic justification and consumer demand.
3. Providing a standardized checklist for geographic and structural barrier considerations.
4. Refining criteria to prevent market saturation while ensuring adequate access in underserved areas.

By addressing these concerns, the proposed regulations can better balance equitable access, business viability, and consumer convenience, fostering a thriving and inclusive cannabis market in NYC. (Cannabis NYC)

Updated Response: The newly proposed 500-foot minimum distance between retailers—paired with provisions allowing the Board to consider applications that fall within this radius if other criteria are met—appears too narrow for the current stage of market development. At this point, allowing dispensaries to cluster so closely could lead to localized saturation and flat sales by reducing the population-to-dispensary ratio. It would be more reasonable to increase the minimum to 750 feet, with the option to revisit and potentially lower that threshold as more stores come online and statewide distribution is more established.

Currently, there are only 155 adult-use brick-and-mortar dispensaries operating in New York, contributing to a statewide total of 380 adult-use cannabis licensees. Compared to more mature markets like California, Colorado, Oregon, and Washington—all of which have seen licensing declines from 2022 to 2024—New York remains in an early expansion phase. These states demonstrate that, at market maturity, dynamics such as competitive pressure, compressed margins, high taxes, and limited access to capital lead to consolidation or closures.

New York currently has the highest population per dispensary among major adult-use markets, with approximately 72,000 residents per store. If New York were to reach 2,000 operational retailers, its retail density would align more closely with states like Colorado (6,000 residents/store), Maine (7,000), Michigan (10,000), and Massachusetts (16,000)⁴. Until that time, broadly circumventing distance requirements under the PCA framework is premature and could destabilize early-stage businesses—particularly those awarded under Social and Economic Equity (SEE) goals. A default position of denial for PCA waivers should be maintained until the market has matured further.

Additionally, the nine-month threshold for determining whether an existing dispensary is “established” enough to assess the potential impact of a PCA waiver is too short. The basis for this specific timeframe is unclear, and it may not provide sufficient insight into business performance or stability. We recommend extending this threshold to at least one year to ensure proper evaluation.

PCA waivers should not be extended to Registered Organizations (ROs) at this time. While the regulations do not clearly articulate the purpose of PCA, it is difficult to justify granting waivers to entities that already have significant market advantages. ROs benefit from vertical integration, established delivery infrastructure, and widespread brand recognition, which makes their products readily accessible to consumers. Granting additional flexibility through PCA to ROs—who already face fewer barriers to market participation—does not meaningfully advance equity or improve public access. Instead, it risks further consolidating the market at the expense of independent and Social and Economic Equity (SEE) licensees.

The regulations should also explicitly state what happens when a PCA request is denied. At the Cannabis Control Board meeting on April 24, 2025, it was stated that denial of a PCA request results in denial of the entire license application. If that is the case, it should be clearly articulated in the regulations, so applicants can make informed decisions about whether to proceed or withdraw. The lack of clarity introduces unnecessary risk into the application process.

Further, the regulations should include language outlining whether applicants may appeal a denied PCA request, and if so, how that process works. There is currently no mention of appeal rights or procedures, which may lead to confusion and disputes.

Lastly, there should be clarification about whether licensees granted PCA waivers prior to the implementation of these amended regulations have the opportunity to reconcile or revise those approvals under the new rules. Offering a pathway for review would ensure consistency and legal clarity as the framework evolves. (Cannabis NYC)

- **Initial Response:** While we appreciate the desire of the OCM and the licensed cannabis community to clarify the process for determining when an exception should be granted to the distance requirements established by the MRTA, we believe this approach swings too far in a permissive direction. The proposal eliminates all consideration of potential negative repercussions of granting the exception, asking applicants to focus entirely on how “public convenience and advantage” is served. A reasonable assessment would

⁴ [2024-ocm-market-report.pdf](#)

consider both positive and negative effects of the proposed action, including how the community and health may be harmed.^{5,6} Given that research demonstrates that higher density of licensed cannabis retailers is associated with more adolescent cannabis use, we advise caution.⁷

In addition, while the regulations for on-site consumption have not yet been finalized, this proposed rule should not apply to on-site consumption licenses, including limited retail consumption facilities (LRCFs).⁸

We are concerned that the number of illicit cannabis dispensaries or former illicit cannabis dispensaries in proximity to existing and proposed dispensaries may not be an accurate estimate of current public demand for cannabis retail dispensaries. The presence, current or historic, of illicit cannabis retailers is not necessarily a sign of need or demand within a given geographical area, but rather a sign of opportunism. Illicit cannabis retailers took advantage of depressed commercial real estate markets and filled vacant storefronts. The proliferation of these shops was largely attributable to minimal (though growing) legitimate competition and the ability to sell unregulated products below legal market value. Current consumer demand may have changed due to the expansion of the legal market and ongoing enforcement efforts against illicit dispensaries. Further, it is unlikely that consistent reliable data about unlicensed dispensaries is available throughout the state.

We recommend keeping these four subparts that are marked for deletion, but changing the last word of (6) from “premises” to “location”:

- (1) the number, classes, and character of other licenses in proximity to the premises and in the particular municipality or subdivision thereof;
- (4) effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the premises;
- (5) the existing noise level at the premises and any increase in noise level that would be generated by the proposed premises;
- (6) the history of cannabis violations and reported criminal activity at the proposed location;

⁵ Fischer, B., Lindler, S.R., Jutras-Aswad, D., Hall W. (2023). Cannabis Use and Health-Related “Harm to Others”: Toward a Conceptual Framework and Evidence Base for Public Health. *Journal of Studies on Alcohol and Drugs*, 84, 636-643. doi:10.15288/jsad.22-00388

⁶ Gourdet, C., Gagnon, F., Moschetti, C., Obradovic, I. (2021). Regulating Private and Public Places of Non-Medical Cannabis Consumption in North America: Public Health and Public Safety Issues. *Journal of Canadian Studies*, 55(2), 279-306.

⁷ Young-Wolff, K. C., Asera, A., Padon, A. A., Slama, N. E., Alexeeff, S. E., Pacula, R. L., Campbell, C. I., Sterling, S. A., Satre, D. D., Lu, Y., Dyer, W. T., Does, M. B., & Silver, L. D. (2024). Association of Local Cannabis Policy and Retail Availability With Cannabis Use and Problematic Cannabis Use Among Adolescents in Northern California. *American journal of public health*, 114(S8), S654–S663. <https://doi.org/10.2105/AJPH.2024.307787>

⁸ Chu, A.K., Kaufman, P., Chaiton, M. (2019). Prevalence of Involuntary Environmental Cannabis and Tobacco Smoke Exposure in Multi-Unit Housing. *International Journal of Environmental Research and Public Health*, 16(18), 3332. <https://doi.org/10.3390/ijerph16183332>.

Although we recognize that Community Boards already consider how the presence of legal dispensaries may impact the above factors when evaluating their support for a license denial appeal, it is unclear how thoroughly this analysis is conducted or where relevant data is sourced from. Given the significant impact of traffic, noise, and criminal activity on health and quality of life, we advise OCM to continue conducting its own separate and objective analyses in parallel with those being done by Community Boards. (DOHMH)

Updated Response: We appreciate the introduction of the proposed revised rule stating that, for municipalities with a population of 20,000 or more, no new licenses of the same type will be granted within a 500-foot radius of an existing retail dispensary or microbusiness and prohibiting the granting of more than one exception between 500 and 1,000 feet. We believe this distance should be even farther for limited retail consumption facilities (LRCFs) and onsite consumption facilities to prevent the presence of two or more of such businesses on the same city block face that exceeds 500' in length, for municipalities with a population of 100,000 or more. Per [Museum of the City of NY](#), the average east-west block length in Manhattan extends 600-900 feet. Under the current proposed revised regulations, the Cannabis Control Board could grant a waiver to an applicant whose location is on the same block face as an existing licensee, despite being in the 500-1000 feet exception range. Given previously referenced research suggesting that a higher density of retailers is associated with more adolescent use, we are particularly concerned about the effect of increased exposure to businesses allowing onsite consumption on adolescent use. As such, we strongly advise that OCM further amends this rule so as to establish a limit of one LRCF per block face that is 1,000 feet in length or less. (DOHMH)

- **Initial Response:** We support an approach to waivers of the proximity restriction that is more directly related to evaluating requests for public convenience and advantage, but are concerned about density of licensed dispensaries near but outside of a 500 foot radius from a school or public youth facility (or 200 feet from a house of worship) that would still be in close proximity to children or that children would have to walk past on their way there and back. We'd recommend considering a further amendment to address this by, for example, including proximity to a school, public youth facility or house of worship as an additional mandatory factor for consideration or including a stricter prohibition to granting a waiver where it would lead to more than 1 dispensary within a 1,000-foot radius of a school, public youth facility or house of worship. (ACS)

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Subdivisions (c) through (l) of section 119.4 are re-lettered to (e) through (n) and new subdivisions (c) and (d) of section 119.4 are added to read as follows: (c) Any requests submitted pursuant to subdivision (b) of this section must attach copies of the following notices, which must be made prior to submission of the request: (1) A notice, to the applicable local municipality or local community board, of the licensee or applicant's intention to submit a public convenience and advantage request from the board pursuant to this section on a form provided by the office. Pursuant to section 76 of the Cannabis Law

and section 119.3(b) of this Part, that notice must include a copy of the application to be submitted to the board and state that the municipality or community board has a maximum of 45 days to submit a response prior to consideration of the application by the board. The board cannot act on the request until the municipality or community board submits a response or the expiration of the 45-day period, whichever happens first. (2) Notice to all existing licensees located within the applicable radius under paragraphs (3) or (4) of subdivision (a) of this section. Such notification must be made at the same time as the municipal or community board notification in paragraph (1) of this subdivision. (d) Parties receiving notices pursuant to subdivision (c) of this section may submit responses to the request directly to the board prior to consideration of the request and be heard during the board 6 meeting in which the public convenience and advantage request is considered. The procedures to submit responses and be heard will be set by the office and subject to approval by the board.

- **Updated Response:** ACS supports the requirement for notice and opportunity for response by the municipality or community board. However, we are concerned that the current proposal may not allow for a meaningful, robust opportunity for community input, including by non-English-speaking New Yorkers. Accordingly, we recommend extending the time-period from 45 days to 90 days, including a requirement for municipalities or community boards to provide opportunities for public comment focused on the communities where the licensee would be located, and including a translation requirement for the notice and accompanying documents to ensure meaningful participation by limited English proficient New Yorkers. (ACS)