

Russell Squire
Chair

Will Brightbill
District Manager



505 Park Avenue, Suite 620
New York, N.Y. 10022-1106
(212) 758-4340
(212) 758-4616 (Fax)
www.cb8m.com – Website
info@cb8m.com – E-Mail

The City of New York
Community Board 8 Manhattan

October 17, 2023

Chris Alexander
Executive Director
New York State Office of Cannabis Management
1220 Washington Avenue
Harriman Campus, Building 9, 4th Floor
Albany, NY, 12226

Dear Executive Director Alexander,

We write to you today on behalf of Community Board 8 Manhattan (CB8) (i) to ask that you not consider license applications to the Office of Cannabis Management (OCM) that have not yet had Community Board review because they did not have proof of control at the time they were referred to CB8; (ii) to seek clarity on the Office of Cannabis Management's regulations regarding what constitutes "proof of control" for purposes of Retail Permit applications; and (iii) to ask that in the near term you not consider license applications to the Office of Cannabis Management that have not yet had Community Board review because of the large volume of applications we have received since October 3rd, and hear such applications after CB8 has had a chance to consider them.

First and foremost, we would like to express our appreciation for the efforts your office has made to inform Community Boards and their members on their responsibilities during the OCM review process. We recognize the difficulties that come with a roll-out of this scale and are grateful for the OCM staff's time and energy spent improving this process.

In addition, we want to express our commitment to doing our part to ensure a timely and successful rollout of legal cannabis in our city and state. To that end, we have already heard and approved multiple OCM applications.

As you are aware, once a Community Board receives an OCM applicant's notice, the board has 30 days to schedule a public hearing for the application and issue their opinion or request a 30 day extension to do so. The goal of this public hearing is to provide a forum for comments and concerns that neighborhood stakeholders might have regarding an application, and work with the applicant to ameliorate any reasonable concerns. We have found this constructive discourse to greatly improve applications.

I. CB8 Asks That OCM Only Consider Applications with Proof of Control

Since October 3, CB8 has received over twenty-five Notice to Municipality forms from proposed retail dispensaries. Despite the guidance in numbers 101 and 102 of the updated FAQs released by OCM on October 11¹ that notice to Community Boards should only occur when applications include proof of control, many of the applications we have received appear to lack proof of control. For example, there are several instances in which multiple applicants have identified the same location for their proposed establishments, a clear indication that those applicants do not have proof of control over the premises.

In order to manage the volume of applications we can consider, CB8 must prioritize only those applications that OCM would deem on track to final licensure, and cannot allot limited public hearing time to applicants who have not yet secured a retail location (particularly if the location they have identified may be leased to a different applicant). Moreover, it is our understanding that if an applicant has notified the Community Board without proof of control over the proposed retail location, the notification is invalid and must be resent once they have proof of control of the location.

In order to determine which applications are on track for final licensure, our board office is asking applicants to provide proof of control over their proposed location and will not hold public hearings for applicants unless they can provide proof of control over a proposed location. Without such proof, according to your FAQ, we believe their notice was invalid and should be resubmitted. Further, we believe that the 30 day clock should not start until OCM and CB8 are provided with an applicant's proof of control for a proposed location.

For applicants who have submitted a Notice to Municipality form, but not provided proof of control of the retail location, a letter will be sent to your office explaining CB8's decision not to hold a public hearing during the erroneous notice period indicated on the form and to instead postpone the hearing until the applicant provides proof of control for a premises within our community district. For the benefit of both the community and the applicant, we ask that OCM not issue a decision on such an application without a Community Board public hearing, and that OCM direct the applicant to resubmit their Notice once they have secured proof of control of their proposed location. **Please confirm that you will abide by this request.**

II. CB8 Requests Clarification of Proof of Control Requirements

Per the guidance at the OCM seminar on October 10, we are accepting the following documents as proof of control over a proposed location:

- An executed deed if they own the property
- An executed lease agreement between them and the owner of the proposed location
- An executed provisional lease agreement between them and the owner of the proposed location

¹ General Licensing Application Frequently Asked Questions.

https://cannabis.ny.gov/system/files/documents/2023/10/adult-use-application-faq_0.pdf

During the OCM seminar, it was indicated that OCM does not accept Letters of Intent (LOIs) from landlords as proof of an applicant's control of a premises. Upon reviewing your website and FAQ, we could not find that information regarding LOIs. **Can your office confirm that the OCM will not accept LOIs as proof of control of a retail location?**

In addition, OCM's guidance² provides that proof of control includes "an option to lease or buy the property." **Do you have further detail as to what types of "options" satisfy the proof of control requirement?**

III. CB8 Requests That OCM Not Consider Applications Prior to CB8 Review

As you are no doubt aware, the opening of OCM's online license application portal on October 3 prompted many applications to be filed. While this enthusiastic response bodes well for the legal regulated cannabis market in New York, the volume of applications that CB8 has received is far too many to hear in just one or two meetings.

As noted above, and in accordance with OCM guidance, we are addressing this volume by limiting our review only to applications that include proof of control over a retail premises and not reviewing other applications until they have provided such proof of control. Nevertheless, it is possible that in the short term, the rush of applications while the online portal is open may mean that CB8 may not be able to hear all of the pending applications that do include a proof of control in just one or two meetings (please note that we do not yet know how many of the applications we have received will ultimately be able to provide proof of control and how many are still provisional).

While we will work through any backlog of applications as diligently as possible to provide timely hearings to applicants, in the event that it takes us more than 30 days to hear applications that are currently pending, we ask that you not consider applications in our community district that CB8 has not yet reviewed and considered. **Please confirm that you will abide by this request.**

* * *

We appreciate your attention to this matter and look forward to continuing to work productively with OCM. Please do not hesitate to reach out to me with any questions or to discuss this further.

Sincerely,

Russell Squire

Russell Squire
Chair

Abraham Salcedo

Abraham Salcedo
Chair, Street Life Committee

cc: Honorable Kathy Hochul, Governor of the State of New York
Honorable Eric Adams, Mayor of the City of New York
Honorable Mark Levine, Manhattan Borough President

² Adult-Use Retail Dispensary License. https://cannabis.ny.gov/system/files/documents/2023/10/au-retail_0.pdf

Honorable Jerry Nadler, 12th Congressional District Representative
Honorable Liz Krueger, NYS Senator, 28th Senatorial District
Honorable José M. Serrano, NYS Senator, 29th Senatorial District
Honorable Edward Gibbs, NYS Assembly Member 68th Assembly District
Honorable Alex Bores, NYS Assembly Member, 73rd Assembly District
Honorable Rebecca Seawright, NYS Assembly Member 76th Assembly District
Honorable Keith Powers, NYC Council Member, 4th Council District
Honorable Julie Menin, NYC Council Member, 5th Council District