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Testimony of State Senator Liz Krueger
Before the NYC Council Committees on
Oversight & Investigation, Health, and Consumer & Worker Protection
Regarding the Proliferation of Unlicensed Smoke Shops in New York City
January 18, 2022

My name is Liz Krueger and I represent the 28th State Senate District, which includes the Upper East Side, Midtown, and Roosevelt Island in Manhattan. Thank you for the opportunity to comment on the proliferation of illicit smoke shops and trucks that has taken place in New York City over the past year and a half.

Along with Assembly Majority Leader Crystal Peoples-Stokes, I was proud to sponsor the New York State Marijuana Regulation and Taxation Act (MRTA) which was enacted into law in March 2021. MRTA was the culmination of years of often complex discussions with legislative colleagues, advocates, local and national drug policy reform experts, law enforcement, and the Governor's office. The law ended the failed policies of marijuana prohibition in our state and the racially disparate enforcement that was endemic to prohibition. It began the process of building a fair and inclusive legal market for adult-use cannabis. Not to mention building a multi-billion dollar industry for New York that encourages small businesses and farms while balancing safety with economic growth. It establishes a national model for building a truly equitable and inclusive industry that works to offset the harms of decades of over policing. Moreover, all tax revenue generated from this new regulated industry is required to be invested back into communities disproportionately hit by the drug war, drug treatment and prevention programs, and public schools.

Since the enactment of MRTA, I have watched closely as the Office of Cannabis Management (OCM) has led the way in living up to the values and goals of the law. In opening the market with its Seeding Opportunity Initiative, OCM started with family farmers across New York growing adult-use cannabis in the most sustainable way possible – with the sun. They've now opened the first retail dispensary, one owned by a nonprofit that's reinvesting its profits into the services it deploys to help New Yorkers, including the formerly incarcerated. In the coming weeks, I understand more legal shops will open,

including those owned by individuals with a cannabis arrest who also have previous business experience.

This is a remarkable success and an achievement reached much faster than we predicted when MRTA was enacted. When MRTA passed we also had the expectation that then-Governor Andrew Cuomo would move quickly to set up OCM. But that didn't happen. In fact, the Cannabis Control Board wasn't appointed until September 2021 when Governor Kathy Hochul quickly took action after taking office. It was during that six-month delay that we saw the first illicit operators begin to open, and they've only gained traction since. While local law enforcement, including the authorities here in NYC, have a role to play in shutting these operators down, they didn't initially move to act, and instead looked to the state for guidance. But with no office in place, there was no one to provide that guidance. By the time OCM had the beginning of an enforcement team, the illicit operators were already entrenched. Like many of you, I am extremely frustrated to see new illegal smoke shops operating throughout my Senate District and regularly receive complaints and questions from residents and community groups asking why these businesses are able to flagrantly violate the law.

There's no question that these operators must be shutdown. They're endangering public health with contaminated products, and with products that often don't match the label. They are putting consumers in danger, selling to young people, opening in locations close to schools and religious institutions prohibited under MRTA, and are undermining the fundamental goals of the law. They don't contribute to an equitable industry, don't contribute revenue to our communities, and damage the legal regulated operators just beginning to open.

I've closely followed as OCM began with an education first approach to ensure that illegal operators and consumers were aware of the parameters of the new law and understand that although we ended prohibition, there are still consequences to operating illegally. To be clear, these operators are breaking more than cannabis laws. They are also breaking the tax law, the penal law, and several municipal laws. The latter two of which are enforceable by New York City agencies. OCM has now stepped-up enforcement activity and begun seizing large quantities of cannabis from illicit shops; these activities have highlighted the fact that felony level possession and sale offenses are regularly being committed.

Recognizing that OCM needed more tools to take on these operators, I worked with my Senate colleagues to pass a bill last June that would have doubled financial penalties for illicit operators, allowed for the revocation of licenses for businesses selling illicit cannabis, and provided OCM and the State Department of Tax and Finance with new tools to go after them. Unfortunately, the legislation was introduced late in the session and was not passed by the Assembly. I am working closely with Assembly Majority Leader Peoples-Stokes and the Governor's office to reach agreement on an updated version of that legislation that hopefully can pass both houses this year.

In the meantime, I continue to support OCM as they use their existing tools to take on these shops. I have been pleased to see OCM work with local partners like the New York City Sheriff's Office and the Department of Consumer and Worker Protection to issue violations, seize illegal products, and shut down illicit operators under existing state and local laws. But I hope that the New York City Police Department also steps up its efforts to curb this activity by enforcing the penal law offenses being committed, particularly offenses related to sales to minors.

There are barriers to enforcement that have been erected by law enforcement and others who are reluctant to engage. I want to be very clear with all of you that criminal offenses for the conduct you see across this city still exist. They were not wiped away when we ended prohibition. Possession of more

than five pounds of cannabis is a felony. Sale of more than sixteen ounces is a felony. Sale to a minor is a felony. While some New York City police precincts understand this, others seem to have wrongly concluded that all cannabis-related activity is now legal and they have no role to play.

I am not calling for a return to prohibition policies, but I do want to make sure we all understand that those criminal offenses still exist, and we left those offenses in the law for a reason. I'm thankful for actions like this hearing that help raise attention to the issue. I look forward to working with my legislative colleagues and the Governor to pass legislation in the coming months to help OCM and local partners put an end to illegal smoke shops while supporting the new legal, highly regulated businesses just beginning to open.

Thank you again for the opportunity to testify today.