



**Office of the New York State  
Attorney General**

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December 20, 2024

Honorable Sharon Graff  
Albany County Supreme Court  
Albany County Courthouse  
16 Eagle Street  
Albany, New York 12207  
(Via NYSCEF and Email)

Re: *Matter of Organic Blooms, LLC., et al. v. NYS Cannabis Control Board, et al.*  
Albany County Supreme Court  
Index No. 904497-24

Dear Justice Graff:

This office represents the Respondents in this proceeding. As discussed at the December 18, 2024 status conference I write to outline for the Court several concerns with the Court's December 12, 2024 Decision and Order, which entered a preliminary injunction prohibiting the processing of certain CAURD and adult use provisional licenses. By this letter, Respondents request that the Court provide further clarification and guidance on the scope of the Court's order. Respondents are receiving many inquiries from retail dispensary applicants concerning the effect that the preliminary injunction will have on the processing of their applications. Respondents are making every effort to comply with the Court's injunction, but request clarification on several issues as detailed below.

In the December 12, 2024 Decision and Order, the Court granted Petitioners' application for a preliminary injunction as follows:

[P]etitioners motion for a preliminary injunction is granted to the extent that pending the outcome of this proceeding, respondents are enjoined from processing CUARD applications in which the applicant did not submit proof of a municipally noticed secured location on or before November 17, 2023 and are enjoined from processing any other provisional AU applications.

NYSCEF Doc. 50 at 13.

As currently framed, the Court’s order creates uncertainty concerning the extent to which it prohibits Respondents from processing CAURD and provisional adult use applications, but also other adult-use applications. Below is a non-exhaustive summary of the areas of uncertainty.

**A. OCM’s Ability to Process Applications Based on Timing of Municipal Notices**

As the Court is aware, this proceeding challenges Respondents’ interpretation and application of Section 76(1) of the Marihuana Regulation and Taxation Act (“MRTA”), which requires that

Not less than thirty days nor more than two hundred seventy days before filing an application for licensure as an adult-use retail dispensary or registered organization adult-use cultivator processor distributor retail dispensary or an on-site consumption licensee, an applicant shall notify the municipality in which the premises is located of such applicant’s intent to file such an application.

The preliminary injunction permits Respondents to continue processing CAURD applications if the applicant submitted “proof of a municipally noticed secured location on or before November 17, 2023.” NYSCEF No. 50 at 13. However, based on Respondents’ initial review of pending applications, there are a significant number of CAURD and general application window applicants who, although they provided proof of a municipally noticed secured location before November 17, 2023, did not do so at least thirty days prior to filing an application as contemplated by Section 76(1).<sup>1</sup> This is primarily due to how the adult-use general application window launched last year. The Office opened the adult-use application window on October 4, 2023. The Office originally indicated that the application window for applicants with proof of control would be open until November 3, 2023. Due to concerns with applicants being able to comply with Section 76(1) of the MRTA, the Office extended the application window by two weeks to November 17, 2023, and issued a clarifying guidance document to all applicants applying for a retail dispensary or microbusiness license with retail authorization on how the municipal notice requirements will be applied by the Office for this application window. The Office clarified that because it will not begin reviewing any applications for at least 30 days following the application window closing, applicants can submit their applications up to and until the application deadline with their notice to municipality requirement and still meet the notice to municipality requirement established by Section 76(1).

As such, Respondents are uncertain whether the Court’s injunction should be read to preclude the processing of this category of applicants. Notably, at least three of the Petitioners would themselves fall into this category of applicants who did not notify the municipality within the required timeframe and thus the processing of their applications would be prohibited by the injunction. If the injunction covers all applicants who did not submit the notice to municipality at least 30 days before application, Respondents estimate that only a very small subset of the

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<sup>1</sup> This category also includes entities who are subject to prior settlement agreements entered in the *Fiore* and *Variscite* cases. To the extent any such entities did not meet the 30-day threshold under Section 76(1), can Respondents continue to process their applications in accordance with their obligations under these settlement agreements?

approximately 1700 applications submitted would be eligible for review due to the way the application window rolled out. The Office conducted an analysis on applications that are in process from the November queue and preliminary results indicate that approximately 55 of the 450 applications currently in process applied with proper notice to the municipality. Additionally, there is an as-yet undetermined subset of these 55 applicants who lost control over their location after their original application, but are eligible for a provisional license under the Office's current policy.

### ***B. Processing of Location Change Amendments, Co-Located Dispensaries, and Lost Location Applications***

Respondents currently process location change amendments for businesses that already have a license. Respondents are uncertain whether, under the terms of the preliminary injunction, they may continue to process location change amendments for licensees.

Additionally, Respondents process new retail dispensary location requests from registered organizations that have been licensed to participate in both the medical and adult-use cannabis markets. Respondents are uncertain whether, under the terms of the preliminary injunction, they may continue to process new retail dispensary location requests for registered organization licenses authorized to participate in both the medical and adult-use cannabis markets.

Finally, there are numerous applicants who applied for adult use licenses with a secured location as part of the November Queue, but, given the length of the application process, have since lost control over their location or found their original location was not viable because of the retail business distance requirements in the Office's regulations. This includes approximately 200 applications that Respondents already started reviewing. Under Respondents' current policy<sup>2</sup>, applicants who have lost control of the property they applied with are eligible to receive a provisional license and then submit a new location to the Office for review. Respondents are unsure whether they may continue to process these applications.

### ***C. Public Convenience and Advantage Requests***

Pursuant to Part 119.4 of the New York Codes, Rules and Regulations Respondents may allow applicants whose proposed locations would otherwise violate distance requirements between adult-use dispensaries, to obtain a license for a premises in such location if it would promote "public advantage and convenience." As such, respondents are also unsure whether the current injunction prohibits them from considering such public convenience and advantage requests.

### ***D. Applicants Receiving Proximity Protection and Holding Property***

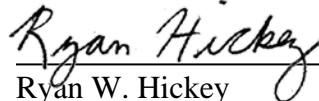
The December 12, 2024 Decision and Order states that "CAURD and provisional license applicants are not carrying the burden of maintain a secured location." NYSCEF No. 50 at 13. However, according to Respondents' initial review, there nearly 150 CAURD and November queue provisional licensees who are presently carrying the burden of maintaining a location,

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<sup>2</sup> Supplemental Policy Guidance: Application Review for the Adult-Use Cannabis: October 2023 Application Window

receiving proximity protection on that location and are close to opening their dispensaries upon final licensure. Specifically, there are one-hundred and seven CAURD provisional licensees that have submitted the “post-selection application” with proof of control over a retail dispensary location and municipal notification, receiving proximity protection and preparing to open their dispensaries. There are also 39 adult-use provisional licensees from the November queue that are currently receiving proximity protection on a retail dispensary location where they had to demonstrate proof of control.

Sincerely,

  
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Ryan W. Hickey  
Assistant Attorney General

cc: Counsel of record (*Via Email and NYSCEF filing*)