

Pursuant to the authority vested in the Cannabis Control Board by sections 10, 13, 64, 76, and 85 of the Cannabis Law, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Paragraph (88) of subdivision (a) of section 118.1 is repealed and paragraphs (89) through (107) are renumbered to (88) through (106).

Subdivision (b) of section 119.4 is amended to read as follows:

(b) Upon request by a licensee or provisional licensee whose proposed location for their licensed premises cannot be approved based on the distance requirements described in paragraphs (1) and (2) of subdivision (a) of this section, t[T]he [B]board may determine that granting a license for a premises in such location would promote public convenience and advantage as described in paragraphs (1) and (2) of subdivision (a) of this section. Upon receipt of a request submitted in accordance with subdivisions (b) and (c) of this section, the board shall [by] consider[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 retail dispensary locations, approved by the office, within

- (i) 1,000 feet of the location in jurisdictions where the minimum distance between retail facilities is 1,000-feet; or
- (ii) 2,000 feet in jurisdictions where the minimum distance between retail facilities is 2,000-feet;

(2) any geographic, structural, or topographic barriers that separate the proposed location from any such 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 such existing retail dispensary locations when measured as a pedestrian or car would travel;

(4) any factors that are unique to the proposed location, including any environmental or economic considerations that may justify its placement and/or a need for greater adult-use cannabis consumer access in the 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; and
- (iii) any other factors submitted by the requestor.

Subdivisions (c) through (l) of section 119.4 are re-lettered to (d) through (m) and a new subdivision (c) of section 119.4 is added to read as follows:

(c) Any requests submitted pursuant to subdivision (b) of this section shall attach a copy of a notification to the local municipality or local community board in which the proposed location is situated of the licensee or provisional licensee's intention to request a waiver from the board pursuant to this section for a location that does not meet the applicable 1,000-foot/ 2,000-foot minimum distance requirement set forth in subdivision (a) of the section. In accordance with section 76 of the Cannabis Law and section 119.3(b) of this Part, such notice shall provide that the municipality or community board will have a maximum of 45 days to submit a response to the notification to the board prior to consideration of the application by the board and shall attach a copy of the application to be submitted to the board. Provided however, that if a licensee or provisional licensee has already notified the local municipality or local community board prior to the effective date of this subdivision and the local municipality or local community board has had an opportunity to express an opinion within the timeframe outlined in this subdivision, the board shall accept this notification as completing the requirement outlined in this subdivision.