



Southern Tier Central Annual Local Government Training



MRB | *group*

The Other Green Development - Local Regulation of Cannabis

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Session Goals

- Re-Cap of the Legalization of Adult Use Cannabis
- Understanding of Authorized Local Government Regulatory Tools
- Understanding of Revenue Implications of Cannabis Sales
- Best Practices for Local Government Management of Cannabis Impacts

But first...some gratitude...

- Public service is a tough gig; local government leadership is among the toughest area of service
- Residents and other community stakeholders look to you to make the right decisions to shape your community
- Your definition of right, theirs, and everyone else's don't necessarily line up
- We are so thankful for your service, and for your commitment to taking your role seriously
- It's not always/ever easy, but thanks to folks like you, our communities are looking better than ever, and have bright futures ahead

Disclaimer

This presentation is for informational purposes and is not intended as legal advice.

It is what it is...

- The State has taken significant steps to legalize marijuana and associated products
- State legislation largely pre-empts local governments from prohibiting or even heavily regulating adult-use cannabis in your communities
- For those communities who did not opt-out prior to the deadline, you should be prepared to develop the necessary regulatory framework to address potential challenges and opportunities
- There are revenue implications (positive) with respect to new taxes associated with cannabis sales



**Refresher:
Cannabis Legalization in
New York State**

Marijuana Regulation and Taxation Act

- In 2021, New York State passed the Act, effectively legalizing marijuana in most forms throughout the State
- The Act created the Office of Cannabis Management, which is responsible for developing regulations and issuing licenses to qualified applicants
- The Act also made personal possession legal in many cases
- Prior convictions of marijuana-related crimes which were made legal by passage of the Act, are in the process of being expunged by the State court system.
- The Act defers heavily to mitigating the social and financial effects of these convictions.

Office of Cannabis Management Board

- Reuben R. McDaniel, III
- Jessica Garcia
- Dr. Jennifer Gilbert Jenkins
- Adam Perry
- Chairperson Tremaine Wright

Opt-Out vs. Opt-In

- Local governments were afforded the opportunity to opt out of retail and on-premise licensed cannabis activity.
- Opt-Out was to be affected by Local Law, requiring an advertised public hearing and affirmative vote by the local governing board.
- A local law opting out of cannabis activity was required to have been completed prior to December 31, 2021.
- Local governments who failed to take action were automatically presumed to authorize activity.
- Local governments who did opt-out, may now opt-in by enacting a new local law, repealing the prior law

Typical Licensing

- Cultivator – Growing, cloning, trimming, etc. Effectively farming
- Processor – Making raw plants ready for sale
- Distributor – Packaging ready product and providing to retailers
- Delivery – Retail sale of ready product to a cannabis consumer
- On-Site Consumption – Sale to consumer for consumption at a licensed location
- New Conditional Adult-Use Cannabis Cultivation License

Personal Impacts

- Home Cultivation –
 - Secure and not accessible by anyone under 21
 - Personal use only – not for sale
 - Propane/butane extraction not permitted
- Personal Possession –
 - “Walking around” possession may include up to 3 ounces of cannabis, and 24 grams of concentrated cannabis (edibles, etc.)
 - “At Home” possession may include up to five pounds of cannabis on personally owned or controlled property.

“Illicit Cannabis”

- Governor’s Proposed Cannabis Enforcement Legislation to revise the tax law
- Includes the following sentence in the definition “The failure of any person who sells adult-use cannabis products or purported cannabis at retail . . . to produce and exhibit to the commissioner . . . upon demand, an invoice by the distributor with a valid registration under this article for adult-use cannabis product or purported cannabis in such person’s possession shall be presumptive evidence that the tax thereon has not been paid.”
- New term “purported cannabis” means any product labeled as, advertised as, or held out to be, cannabis or a substance possessing the properties of cannabis or THC. . .



**The Toolkit:
Local Government
Regulatory Options**

Local Control and Preemption

- Can govern time, place and manner of the operation of licensed adult-use cannabis retail dispensaries and/or on-site consumption site”
- Cannot make such facilities “unreasonably impracticable”

Adult-Oriented Business Model

- Zoning and other local regulations have a long history of being deployed to address adult uses in New York State and beyond
- Courts have held that such regulations should be based on findings of fact (typically referencing studies on anticipated impacts)
- In order to pass constitutional muster, zoning and other regulations must clearly identify the concerns working to be addresses, must be limited to the bare minimum regulation needed to address the stated concerns, and must provide for sufficient alternate locations elsewhere in the community

Zoning

- Consider use of zoning in the same manner as other regulated uses; particularly adult uses
- Ensure that any zoning changes are consistent with comprehensive plans and other data-driven methodology
- Growing and distributing operations must be treated in the same manner as other agriculture and industrial uses
- Dispensaries and on-site consumption sites can be addressed in one of several ways:
 - Relegation to limited districts
 - Proximity to one another or to sensitive uses (i.e. schools, parks, churches, etc.)

Operational Requirements

- So long as they are not deemed “overly burdensome”, municipalities may address some areas of operations of dispensaries and on-site consumption, including:
 - Hours of operation
 - Signage
 - Conformance to local building and safety codes
- It’s best to demonstrate that these are similarly applied to like uses in the community
- Ensure that such regulations are adopted in the manner prescribed by law (local law, ordinance, etc.)

Draft Adult Use Cannabis Regulations

- Adult Use Cannabis Draft Regulations
 - Part 118 – Definitions
 - Part 119 – Municipal Rulemaking
 - Part 120 – Application and Licensure
 - Part 121 – Social and Economic Equity Rules
 - Part 123 – License Specific Authorizations, Requirements and Prohibitions
 - Part 124 – General Business Requirements and Prohibitions
 - Part 125 – General Operating Requirements and Prohibitions
 - Part 131 – Severability and Reference Materials

Key Local Provisions in Draft

- 30 days prior notice to the municipalities before applying for an adult-use retail dispensary or on-site consumption license
- Distancing Requirements
 - Houses of worship (200 feet)
 - Schools (500 feet)
 - Community facilities such as public parks, libraries, etc., but not greater than 500 feet
 - Other marijuana retail establishments (1000 / 2000 foot radius), but Board reserves right to override

Unreasonably Impracticable Determination

- Regulations set forth guidance on this issues
 - Hours of operation – cannot restrict to less than 70 hours
 - Location (historic district, etc.)
 - Parking
 - Traffic
 - Odor
 - Noise

Board Advisory Opinion

- Board can issue an advisory opinion if there is an allegation, which can be used as prima facie evidence of the Board's opinion
- If the law hasn't been adopted, then the advisory opinion purports to preempt the local law

Other Considerations

- Properly enacted local laws
- Vested Rights
- Moratorium Process
- Compliance with the State Environmental Quality Review Act (SEQRA)

State Environmental Quality Review Act (SEQRA)

- ▶ State Environmental Quality Review Act (“SEQRA”)
 - Environmental Conservation Law Article 8
 - 6 NYCRR 617
- ▶ Any discretionary approval requires compliance with SEQRA
- ▶ Strict procedural compliance

SEQRA - Purpose

- SEQRA requires the consideration of environmental factors early in the planning stages of the actions that are directly undertaken, funded or approved by local, regional and state agencies
- Very powerful tool to examine the impacts

Determination of Significance

- Must thoroughly analyze the identified areas of environmental concern to determine if the action may have a significant adverse impact on the environment, and
- Set forth the determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.
- Negative Declaration or Positive Declaration

Environmental Assessment Form (“EAF”)

- ▶ The applicant/sponsor completed Part 1 of an Environmental Assessment Form
 - Summarizes the Project Information

- ▶ Submit with the application
 - Short EAF (SEAF)
 - Full EAF (FEAF)

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The Clean Indoor Air Act

- In 2017, New York State expanded the Clean Indoor Air Act to prohibit smoking or vaping in nearly every publicly accessible indoor space
- Some outdoor areas may also be affected, including entrances to parks, schools, ticketing facilities, etc.
- Local governments may pass laws that are more restrictive than the CIAA
- The CIAA, and any reasonable local enhancement, also applies to marijuana smoking in every form
- Businesses and building owners failing to comply with the Act may be fined up to \$2,000 for each violation

Off Limits

- Outright prohibitions (unless opted out)
- Regulation of operational activity of cultivation, distribution, or processing
- Imposition of additional local licenses or taxes (aside from property taxes, building permits, safety permits applied to other retail uses, etc.)
- Imposition of regulation associated with possession
- Regulation of medical marijuana or CBD / hemp



**High Finance:
New Revenues from
Cannabis Sales**

State Taxation Framework

- The State has addressed cannabis taxation across multiple layers.
- Distributors are taxed based on the concentration of THC on sale to a dispensary
- Dispensaries pay a 9% state tax on all cannabis proceeds
- State taxes are divided among:
 - Lottery Fund – Local School Support (40%)
 - Community-Based Organizations (40%)
 - Treatment and Substance Abuse Education (20%)

Local Revenue Impacts

- In addition to State-retained taxes, all retail sales of cannabis products are subject to a 4% excise tax on the value of the sale
- Within a given County, 25% of all local excise taxes are retained by the County itself
- The remaining proceeds are distributed among cities, towns and villages, based on proportion of total County sales
- Towns and villages may establish an agreement for how town-retained revenues are shared. In absence of an agreement, towns and villages split proceeds equally

Sample Distribution Calculation

Countywide Sales:	\$10,000,000
Tax Generated:	\$ 400,000
County-Retained:	\$ 100,000

Local Distribution:	
Weed City:	\$ 90,000
Town of Budd:	\$ 45,000
Town of Blaze:	\$ 75,000
Town of Dry:	\$ 0

<u>Wholly-Residing Village:</u>	
Town of Grass (total):	\$ 90,000
Town Retains:	\$ 45,000
Village of Bongsville:	\$ 45,000

<u>Percent of total sales:</u>	
Weed City:	30%
Town of Budd:	15%
Town of Grass:	30%
Town of Blaze:	25%
Town of Dry:	0%



**Cultivating Success:
Best Practices in
Implementation**

Process, Process, Process

- The most significant opportunity for judicial or administratively-directed impacts to local regulation is in the process of adoption
- Consult with your attorney as you begin to prepare regulation, and get guidance on the vehicle for regulation (administrative, ordinance, local law, etc.) and the process for adoption/implementation
- Ensure all required public notices, hearings, etc. are addressed during the adoption process, and are documented
- Consider a separate/duplicate file set for proceedings related to cannabis

Comprehensive Plan Impacts

- If a municipality has an existing comprehensive plan, any zoning changes must be congruent with plan strategies and concepts
- Review your plan documentation to understand any linkages between plan strategies and the regulation of various cannabis operations
- Consider a plan amendment that directly addresses the community's take on cannabis so that the connection between the plan and regulation are as tight as possible
- During regulatory adoption, specifically cite any linkages between comprehensive planning and regulation

Public Engagement

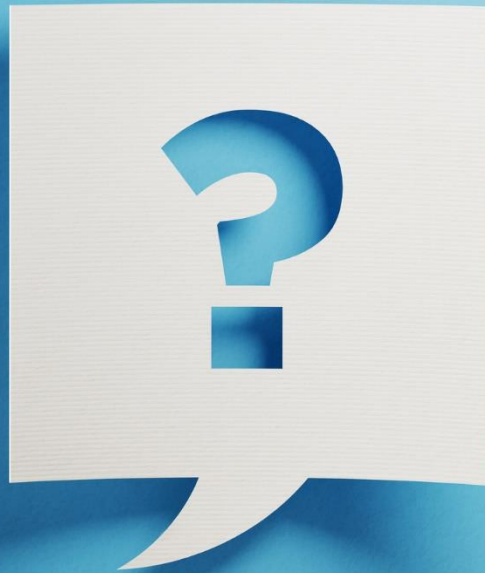
- Resistance to challenges may withstand stronger scrutiny with a clear record of public sentiment
- As you are crafting regulations, consider public forums, surveys, and other input opportunities over and above mandated public hearings
- Thoroughly document any input you receive, and tag it to any regulation development activity
- Diversify the opportunity for public engagement – digital, traditional, live events, surveys, etc.
- Consider prominently featuring activity related to cannabis on your community website.

Enforcement

- Approach enforcement in the same manner as you would other regulatory approaches
- Building Officials and Code Enforcement Officers should have a clear understanding of the rules and regulations associated with cannabis activity
- Planning and Zoning Boards should receive regular refresher training on local regulations and state provisions
- Engage with the Health Department on CIAA violations
- Engage with the Office of Cannabis Management on violations of state licenses

In Summary

- It's legal. Now take the necessary steps to mitigate impact.
- Zoning, Clean Air, and other adult-oriented business regulatory frameworks provide good patterns for cannabis regulation
- Work with your County leadership to understand how revenue will be collected and distributed
- Ensure sound legal approach in adoption of new regulations. Process and procedure will be targeted in opposition of new laws.



Questions?

We're Here to Help!

Contact us anytime with questions, clarifications, or concerns:

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