



## What is in the Law Local Governments

### Overview

On March 31, 2021, Governor Andrew Cuomo signed the Marihuana Regulation & Taxation Act legalizing adult-use cannabis (also known as marijuana, or recreational marijuana) in New York State. The legislation creates a new Office of Cannabis Management (OCM) governed by a Cannabis Control Board to oversee and implement the law (collectively referred to as “OCM”). The OCM will issue licenses and develop regulations outlining how and when business can participate in the new industry. The OCM will also oversee the State’s existing Medical Marijuana Program and Cannabinoid Hemp Program, previously regulated by the Department of Health.

The information below is a collection of key provisions from the MRTA which impact local governments and local officials. For additional information or to contact the Office of Cannabis Management, please visit our website at: [www.cannabis.ny.gov](http://www.cannabis.ny.gov) or e-mail us at: [info@ocm.ny.gov](mailto:info@ocm.ny.gov).

### Local Opt-out

Cities, towns, and villages can opt-out of allowing adult-use cannabis retail dispensaries or on-site consumption licenses from locating within their jurisdictions; however, municipalities cannot opt-out of adult-use legalization. Possession and use of cannabis by adults 21 years of age or older is legal in New York State.

To opt-out of allowing adult-use cannabis retail dispensaries or on-site consumption licenses, a municipality must pass a local law by December 31, 2021. This means that if a municipality has already passed a local law or resolution prohibiting adult-use cannabis licensees from operating in its jurisdiction, the municipality will have to pass a new local law conforming to the opt-out requirements outlined in the MRTA if the municipality still chooses to opt-out.

If a municipality does not opt-out by December 31, 2021, the municipality will be unable to opt-out at a future date. However, at any time a municipality may opt back in, to allow adult-use retail dispensaries and/or on-site consumption licenses, by repealing the local law which established the prohibition.

A municipality may choose to opt-out of both adult-use retail dispensaries and on-site consumption licenses or just one type of license (e.g. allow retail dispensaries but not on-site consumption licenses). Municipalities are prohibited from opting out of other adult-use license types from locating or operating within their jurisdiction. Additionally, municipalities are prohibited from opting out of medical cannabis or cannabinoid hemp license types. If a town passes a local law to opt-out, it only affects the area of the town outside of any village within the town. County governments are not permitted to opt-out of any adult-use license types.

Any local law opting out of adult-use retail dispensaries or on-site consumption licenses will be subject to a permissive referendum as outlined in section 24 of the Municipal Home Rule Law. This allows voters within the municipality to petition whether or not to approve the local law.

## **Local Control and Preemption**

Except for the opt-out provision described in the section above, all municipalities including counties, are preempted from adopting any law, rule, ordinance, regulation, or prohibition pertaining to the operation or licensure of adult-use cannabis, medical cannabis or cannabinoid hemp licenses.

However, towns, cities and villages are permitted to pass local laws and regulations governing the time, place and manner of adult-use retail dispensaries and on-site consumption licenses, provided such laws and regulations do not make the operation of the license unreasonably impracticable. For example, cities, towns, and villages may pass laws and regulations pertaining to local zoning and the location of licensees, hours of operations and adherence to local building codes. Municipalities may not issue or require local licenses for cannabis businesses.

## **Notification to municipalities**

At least 30 days prior to applying for an adult-use retail dispensary or on-site consumption license, an applicant must notify the municipality of the applicant's intent to apply for such license. The notification must be made to the clerk of the village, town, or city, or if in the city of New York, the community board in which the proposed premise is located. When the municipality expresses an opinion for or against the granting of the license, the opinion shall be deemed part of the record and used by the OCM to determine whether to grant or deny the application. The Cannabis Control Board must then respond in writing to the city, town, village, or community board, with an explanation of how such opinion was considered in the granting or denial of an application.

## **Adult-Use Taxation**

The MRTA establishes three taxes on adult-use cannabis. First, there is a tax imposed on the distributor based on the milligrams (mg) of total THC in the product. There are different rates of tax depending on the cannabis product form.

- Edibles (e.g. food and beverages) are taxed at \$0.03 per mg of total THC
- Concentrates (e.g. vaporization oil, wax, shatter, and resin) are taxed at \$0.008 per mg of total THC
- Cannabis flower (e.g. loose flower, pre-rolls, or shake) are taxed at \$.0005 per mg of total THC

The mg per total THC tax accrues at the sale from a distributor to a retail dispensary and is paid to the State by the distributor. If the distributor is also the licensed retailer, such as a microbusiness or registered organization, the tax accrues at the time of the retail sale.

Second, there is a state excise tax imposed on the sale of cannabis products by a retail dispensary to a cannabis consumer at 9 percent of the products' price.

Third, there is a local excise tax imposed on the sale of cannabis products by a retail dispensary to a cannabis consumer at four (4) percent of the products' price. This tax is distributed to local governments based on where the retail dispensary is located. Twenty-five (25) percent of the tax revenue goes to the county and seventy-five (75) percent goes to the cities, town, or villages within the county as a proportion of cannabis sales. If a town and a village within the town both allow adult-use sales, the revenue shall be distributed based upon a distribution agreement between the town and village. If no such agreement exists, then the revenue distribution between the town and village shall be divided evenly.

## **Adult-Use Tax Revenue Distribution**

All adult-use cannabis taxes are deposited in the New York State Cannabis Revenue Fund. First, the Cannabis Revenue Fund covers the costs of administering the cannabis programs and the implementing the MRTA, including costs to the OCM's operating costs, increasing Drug Recognition Expert training, and implementing incubators and workforce development for social and economic equity applicants.

After upfront costs, the remaining tax revenue is distributed into three separate funds:

- 40% to the State Lottery Fund for education
- 40% to the Community Grants Reinvestment Fund to issue grants to non-profit and community-based organizations in communities disproportionately impacted by cannabis prohibition, and other social equity initiatives.
- 20% to the Drug Treatment and Public Education Fund to development and implement statewide public education campaigns and provide substance use disorder treatment programs for youth and adults.

## **Public Consumption (Smoking)**

The legislation adds cannabis to the existing Clean Indoor Air Act (CIAA), which establishes prohibitions on where cannabis can be smoked or vaporized. The smoking or vaporizing of cannabis is prohibited anywhere smoking tobacco is prohibited. Cannabis cannot be consumed when operating a motor vehicle. Pursuant to the CIAA, municipalities are authorized to make laws that are more restrictive than the CIAA.

## **Home Cultivation of Cannabis**

New Yorkers 21 years of age and older can grow up to 6 cannabis plants in their home for personal use (3 mature plants and 3 immature plants) and a maximum of twelve plants per household (6 mature plants and 6 immature plants). ***Please be aware the home cultivation of cannabis is not allowed immediately.*** Pursuant to the MRTA, the home cultivation of cannabis is only permitted after the OCM issues regulations governing home cultivation of cannabis, which will occur within 18 months of the first adult-use retail sale. The MRTA also permits the home cultivation of medical cannabis for certified patients registered in the Medical Cannabis Program. Home cultivation for certified patients has an accelerated timeline, but is not authorized until the OCM issues regulations, which will occur on or before September 30, 2021.

- Cannabis plants must be kept in a secure place and not accessible to any person under 21.
- Home cultivated cannabis cannot be sold to anyone and is only intended for personal use.
- The use of compressed gas solvents, such as propane or butane, to process or extract home cultivated cannabis, will not be allowed.
- Local municipalities may enact and enforce regulations relating to home cultivation of cannabis, provided no municipality may completely ban or prohibit home cultivation.

## **Personal Possession**

Adults over 21 can possess up to 3 ounces of cannabis and 24 grams of concentrated cannabis (like vaporization oil or an edible). Adults may possess up to five pounds of cannabis at their personal residence or grounds. Personal possession over the legal limit and the unauthorized sale of any amount of cannabis is illegal and subject to penalties.

## **Contact Us**

Please visit our website or contact us using the e-mail and phone number below for more information.

**Website:** [www.cannabis.ny.gov](http://www.cannabis.ny.gov)

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