



# TOWN of GREENBURGH

## Community Development & Conservation

**Paul Feiner**  
*Supervisor*

**Garrett Duquesne, AICP**  
*Commissioner*  
**Aaron Schmidt**  
*Deputy Commissioner*

October 27, 2021

### **RE: Commissioner Remarks at Town Board 10/27/2021 Marijuana Public Discussion**

- Good evening Supervisor Feiner and Town Board members and all those watching.
- I'm Garrett Duquesne, Commissioner of the Department of Community Development and Conservation.
- I'm going to begin with an overview of New York State's recent legislation related to the legalization of marijuana, and focus in on local land use considerations for the Town of Greenburgh.
- I first would like to remind all residents that there are several very informative PDF documents prepared by NYS on this matter on the Town of Greenburgh website under News and Town Board reports.
- As many are aware, New York State's recent legislation will at some point in 2022, legalize many aspects of recreational marijuana throughout the state for anyone 21 years or older.
- Local governments such as the Town of Greenburgh will have varying levels of control for those aspects of the law which are not pre-empted by New York State.
- The topics I will briefly touch on this evening are public consumption, home cultivation, commercial cultivation, retail dispensaries, on-site consumption, social equity, taxation, and public safety.
- **Public Consumption:** The term public consumption is most easily described as what can be smoked and where it can be smoked. NYS Public health law has been updated to include the smoking of cannabis or marijuana to the pre-existing list of cigars, cigarettes, tobacco pipes, etc. In terms of where smoking can take place, which again, will include marijuana, as examples are at a private home or residence, and hotel/motel that allows smoking. As a hypothetical if a neighbor is smoking marijuana in their back yard, similar to as if they were smoking a cigarette or cigar, and the scent was objectionable to you, there is no action to enforce by the Town or other as this would be a permissible activity. While a good rule of thumb to easily understand public consumption is that if one can legally smoke a cigarette in a certain location, it will also be permissible to smoke marijuana in that location, please note that there are some important exceptions to that rule: Tobacco smoking (but not the smoking of cannabis) may legally continue in

private automobiles, retail tobacco businesses, cigar bars, outdoor dining areas of food establishments, and enclosed rooms in food service establishments/bars/catering halls.

- **Home Cultivation:** With regard to home cultivation, we are referring to non-commercial growing of marijuana plants. The NYS law identifies that a resident 21 years of age and older can grow up to 6 cannabis plants in their home for personal use or up to a maximum of twelve plants per household (in both instances this plant total is split between mature and immature plants) mature = flowering with buds. These plants must be kept in a secure place and not accessible to any person under 21. From a local policy perspective, regulations mandating plants in a fenced in rear yard could be a local law consideration for the Town.
- **Commercial Cultivation:** Regarding commercial cultivation, it is anticipated that there will be both indoor and outdoor commercial cultivation sites throughout New York state. Indoor cultivation occurs in 'grow houses' which can be as large as 150,000 square feet, as example, with high ceilings, heavy-duty ventilation, lighting and security. I have read estimates that in New York State, four million square feet of space devoted to cultivation is projected to be built. Commercial cultivation could also occur on a farm or other commercial open space. I personally have driven past a large commercial hemp field in Lagrange NY, in Dutchess County and was surprised at the intensity of the scent from that hemp field. From a local policy perspective, one example of a potential local law provision would be to restrict commercial cultivation to fully enclosed indoor facilities by special permit, within specified zoning districts in the Town, such as those that permit warehousing.
- **Retail Dispensaries:** As a result of the NYS legislation, it is anticipated that there could be over 700 retail dispensaries in New York. A NYS license will be required, as well as local approvals, if established by local law. If such approvals are obtained, a retail dispensary may only sell to someone 21 or over to purchase marijuana for off-site consumption. These facilities may not sell alcohol and are subject to police inspection. Similar to the policy consideration mentioned prior for commercial cultivation, an example of a potential local law provision would be to regulate dispensaries by special permit, within specified zoning districts in the Town. Retail dispensaries are one of the two categories where a local government can "opt-out." To opt out, which is the equivalent of an indefinite moratorium, would legally allow the Town to preclude the presence of retail dispensaries in the unincorporated areas of the Town of Greenburgh. To opt out, the municipality must pass a local law by December 31<sup>st</sup> of this year. All local laws passed by municipalities opting out of allowing adult-use retail dispensaries are subject to a permissive referendum.
- **Onsite Consumption:** Section 77 of the NYS legislation provides licensing requirements for on-site consumption businesses. These are anticipated to be lounges where cannabis can be consumed (no alcohol is permitted in these locations). This is the second and last category where a local government can opt out, following similar procedures as noted above for retail dispensaries, also with a December 31<sup>st</sup> cut-off date. Similar to the retail dispensary consideration, municipalities deciding not to opt out can regulate time place manner, as well.

There is a source online:

[https://www.google.com/maps/d/viewer?mid=1Vwy9IK6NunsR7NbtD\\_SwtMIPTR-](https://www.google.com/maps/d/viewer?mid=1Vwy9IK6NunsR7NbtD_SwtMIPTR-)

[cBHOu&ll=41.012530635220784%2C-71.542183821875&z=7](https://cBHOu&ll=41.012530635220784%2C-71.542183821875&z=7) which tracks NYS local governments and identifies whether a municipality has opted out of both dispensaries and on-site consumption lounges, is leaning towards opting out, has opted in or is leaning towards opting in. As of today, it appears that 166 local governments have opted out of both. 34 local governments are leaning towards opting out, 53 have opted in and 20 local governments are leaning towards opting in. 13 local governments have opted in on dispensaries and are opting out of on-site consumption lounges for a Statewide total of about 75% opting out.

- **Social Equity:** Should the Town, at some point, opt-in to dispensaries and/or on-site consumption lounges, it is worthy to note that NYS may provide low interest or zero interest loans "to qualified social and economic equity applicants and to provide funds necessary for the provision of such loans," presumably for residents interested in investing in adult cannabis use businesses. (Section 16-ee of the New York State Urban Development Corporation Act.

Additionally, community grants that may be available to the Town under Section 99-kk of the State Finance Law, for the following purposes:

support job placement -- job skills services -- adult education -- mental health treatment substance use disorder treatment --- housing -- financial literacy -- community banking -- nutrition services etc-- services to address adverse childhood experiences -- afterschool and child care services -- system navigation services -- legal services to address barriers to reentry, including, but not limited to, providing representation and related assistance with expungement, vacatur, substitution and resentencing of marijuana related convictions, -- linkages to medical care, women's health services and other community-based supportive services.

- **Taxation:** The relevant tax on adult use cannabis is found in Section 493(c) of the tax law, which provides that towns and counties will split a 4% tax on the sale or transfer of cannabis to a retail customer. That tax will go into a trust that ultimately will be distributed so that the local government would get 75% of the 4% (or 3% of the sale).
- Lastly **Public Safety Considerations:** Section 1227(1) of the Vehicle & Traffic Law has been amended to read that the consumption of cannabis, along with the drinking of alcohol remain prohibited. Section 102(8) of the Alcohol Beverage Control Law has been added to confirm that an alcoholic beverage license may not sell cannabis where alcoholic beverages are sold. There are presently no technology for Police Officers to detect marijuana in the system that is comparable to Blood Alcohol Content methods.
- Police Chief Chris McNerney cautions that there will be the risk of increased motor vehicle accidents/fatalities based on data from states that have legalized and have documented an increase in marijuana related traffic accidents, and particularly from Colorado-based data. The Chief notes that in legal states, there is prevalent information that cannabis use by youth, including vaping use has disproportionately risen vs. non-legal states. Calls to poison control centers for marijuana exposures following legalization increased 113% in Colorado and 140% in Massachusetts (2019), and the

points mentioned prior lead the Chief to recommend that the Town-opt out of both dispensaries and on-site consumption sites.

The Town learned today that the New York State Office of Cannabis Management will hold its next meeting on Wednesday, November 3<sup>rd</sup>, which is a publically accessible virtual meeting. It is important to note that additional details continue to emerge from the State with regard to implementation of marijuana-based legalization, which Town staff is monitoring very closely.