

2021 New York State Marijuana Legislation – Local Government Outline

While the recent law legalizing cannabis was all encompassing and amended numerous provisions of the New York State Law, this memorandum will focus on those changes which are expected to most closely impact the Town of Greenburgh.

Legislation Overview

The New York State legislation establishes a framework related to the growth, processing, distribution, sale, and recreational consumption of cannabis products. This memo will provide policy considerations and information with regard to Local Opt-out potential, Local Land-use control, Taxation, public consumption, Commercial cultivation, home cultivation, Social equity, etc.. FAQ cut sheets provided by the State are appended to this outline and provide greater detail.

On March 31, 2021, New York State legalized adult-use cannabis (also known as marijuana, or recreational marijuana) by passing the Marijuana Regulation & Taxation Act (MRTA). The NYS legislation creates a new Office of Cannabis Management (OCM) governed by a Cannabis Control Board to oversee and implement the law. However, with regard to cannabis there are aspects in which the Town of Greenburgh will have varying levels of control.

Links:

<https://www.nysenate.gov/legislation/bills/2021/S854>

<https://www.nytimes.com/article/new-york-marijuana-legalization-facts.html>

<https://cannabis.ny.gov/local-government>

Public Consumption –

- The NYS legislation adds cannabis to the existing Clean Indoor Air Act (CIAA), which establishes prohibitions on where cannabis can be smoked or vaporized.
- Public Health Law Section 1399-n(8) has been amended so that “smoking” now means “the burning of a lighted cigar, cigarette, pipe or other matter or substance which contains tobacco or cannabis as defined in section 222.00 of the penal law, or cannabinoid hemp as defined in section three of the cannabis law.” Relating to this, Section 1399-q of the PHL has been revised to allow smoking – including the smoking of cannabis - in a private home or residence, hotel or motel room, membership associations. Smoking and vaping of cannabis products, but not tobacco, is authorized in adult-site consumption premises. Tobacco smoking (but not the smoking or vaping of cannabis) may legally continue in private automobiles, retail tobacco businesses, cigar bars, outdoor dining areas of food establishments, enclosed rooms in food service establishments/bars/catering halls, etc., and retail electronic cigarette stores.

- The smoking or vaporizing of cannabis is prohibited anywhere smoking tobacco is prohibited. **Examples in the Town:** Inside government buildings and related identified on-site areas, Town Parks.
- Only adults 21 years of age or older may possess and use adult-use cannabis
- Landlords, property owners and rental companies can still ban the use of cannabis on their premises. **Examples in the Town:** An office building can ban smoking in common areas, an apartment building/hotel can ban indoor smoking, etc.

Public Consumption Policy Considerations

1. Some communities have prohibited all types of smoking on its municipal streets, sidewalks, parks, and “shared public and recreational spaces.
2. See opt-out provisions “on-site consumption licenses”

Home Cultivation –

- A resident 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) up to a maximum of twelve plants per household (6 mature plants and 6 immature plants).
- Cannabis plants must be kept in a secure place and not accessible to any person under 21.
- Local municipalities may enact and enforce regulations relating to home cultivation of cannabis, provided no municipality may completely ban or prohibit home cultivation

Home Cultivation Policy Considerations

1. Consider adoption of a local law/ordinance creating regulations regarding the placement of plants on a residential property.

Commercial Cultivation, Processing, and Distribution –

- Regarding commercial cultivation, processing and distribution, it is anticipated that there will be both indoor and outdoor commercial cultivation sites throughout the state.
- Currently, New York is home to about 700 cannabis growers. Aside from the 10 large licensed medical providers who are growing marijuana, the others grow industrial hemp. <https://www.newyorkupstate.com/news/2021/04/new-york-cannabis-farmers-let-us-plant-legal-marijuana-now.html>

- Indoor cultivation occurs in ‘grow houses’ which can be as large as 150,000 square feet or more, with high ceilings, heavy-duty ventilation, lighting and security. Some have indicated that in New York State, four million square feet of space devoted to cultivation will be built.
<https://www.nytimes.com/2021/05/04/business/cannabis-real-estate-new-york.html>
- There is a lack of detail regarding outdoor growth of commercial cannabis associated with the new NYS legislation.

Commercial Cultivation, Processing, and Distribution Policy Considerations

1. As the NYS legislation does not allow for local prohibition of Commercial Cultivation, Processing, and Distribution, the Town of Greenburgh will have the potential to regulate these aspects by adoption of a local law/ordinance.
2. 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 -

- Section 85 of the law pertains to adult-use cannabis retail dispensaries, which may only sell to someone 21 or over to purchase cannabis for off-site consumption. These facilities may not sell alcohol and are subject to police inspection.
- Section 125 contains general provisions which state that, other than by credit card, a licensee may not sell cannabis by credit, must have adequate supervision, may only sell NY cannabis (until such time as it may be legal to import it under federal law), may not sell house-to-house concurrently with delivery (although medical marijuana may be delivered).
- As a result of the NYS legislation, it is anticipated that there could be 700 to 900 dispensaries in New York.
- Local opt-out under Section 131 is limited to retail dispensaries (not medical) and on-site consumption licenses. To opt out, the municipality must pass a local law by December 31, 2021. All local laws passed by municipalities opting out of allowing adult-use retail dispensaries or on-site consumption licenses are subject to a permissive referendum as outlined in section twenty-four of the Municipal Home Rule Law.

- The law reads that "any town law shall apply to the area of town outside any village within such town." This clarifies that a Town may not opt out for its villages. A municipality may opt out of either (or both) categories. It is permissible for the Town to opt out of on-site consumption, but not retail, or vice-versa.

Retail Dispensary Policy Considerations

1. The Town must consider whether or not to opt out of retail dispensaries by December 31, 2021.
2. If the Town determines not to opt out, it is recommended that a local law/ordinance be prepared to address time, manner, place – as related to retail dispensaries.
3. Similar to the policy consideration above 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.

On Site Consumption -

- Section 77 of the NYS legislation provides licensing requirements for **on-site consumption businesses**. These are anticipated to be club-like lounges where cannabis can be consumed (no alcohol permitted).
- Section 77(4) makes clear that an on-site consumption license may not be granted within 500 feet of school "grounds" or 200 feet from a house of worship.
- In determining whether it will issue a consumption license, the Cannabis Control Board "may consider...evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies."
- Local opt-out under Section 131 is applicable to on-site consumption licenses. To opt out, the municipality must pass a local law by December 31, 2021. In considering whether to opt out of this, it should be noted that one of the reasons why this provision was included in the NYS legislation was that it allowed residents who have no other places to consume a legal place to do so. Specifically, it has been noted by Assembly Majority Leader Crystal People-Stokes that smoking **would not be permitted in federal public housing** and that was one of the reasons for this provision. All local laws passed by municipalities opting out of allowing adult-use retail dispensaries or on-site consumption licenses are subject to a permissive referendum as outlined in section twenty-four of the Municipal Home Rule Law.
- The law reads that "any town law shall apply to the area of town outside any village within such town." This clarifies that a Town may not opt out for its villages. A municipality may opt out of either (or both) categories. It is permissible for the Town to opt out of on-site consumption, but not retail, or vice-versa.

On-site Consumption Policy Considerations

1. The Town must consider whether or not to opt out of On-site consumption by December 31, 2021.
2. If the Town determines not to opt out, it is recommended that a local law/ordinance be prepared to address time, manner, place – as related to on-site.
3. An example of a potential local law provision would be to on-site consumption locations through a special permit process, within specified zoning districts in the Town.

On-site Consumption Policy FAQ

1. Could an existing or proposed restaurant or bar obtain an on-site consumption license? Unlikely, as it would have to abandon its liquor license and apply for a consumption license.
2. Could an existing or proposed tobacco retailer obtain an on-site consumption license? Possibly, but it would have to apply for a consumption license and demonstrate why it, over others, deserves a license.
3. Could a proposed marijuana retailer obtain an on-site consumption license? No.

NYS Agency-Related

- The law establishes the creation of a New York State Cannabis Control Board and an Office of Cannabis Management, which will be a division of the Alcohol Beverage Control. Sections 7-10 of the new law deal with the establishment of those entities.
- Notwithstanding the time limits regarding notification above, it appears that Section 130 will allow the Cannabis Control Board to issue temporary/preliminary ("special use") permits for up to 90 days to allow for an abbreviated application process. It appears that these permits are limited to the industrial purchase (not consumption) of cannabis, trucking, and warehousing, and packaging of cannabis.
- Section 131-a, states that the Office of Cannabis Management is to be a necessary party "to all actions and proceedings affecting in any manner the possession, ownership or transfer of a registration or permit to operate within a municipality.

Social Equity Component

- There will be community grants that may be available to the Town under Section new 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 -- 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

- In addition, the NYS legislation 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.

Medical Marijuana

- Part two of Section 131 preempts the Town from limiting or prohibiting the licensing of medical marijuana facilities, adult-use cannabis licenses, or cannabinoid hemp licenses (other than the opt-out provisions).

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 Town will get 75% of that 4% (3% of the sale).

Legal - Policing

- Article 5 (Sections 90-111) relate to Cannabinoid Hemp and Hemp Extract.
- Section 1227(1) of the Vehicle & Traffic Law has been amended to read that the consumption of cannabis, along with the drinking of alcohol, or the possession of an open container containing an alcoholic beverage on a public highway or right-of-way remains 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 is presently no technology for Police Officers to detect marijuana in the system that is comparable to Blood Alcohol Content methods