



THE MARIHUANA REGULATION AND TAXATION ACT



What Municipalities Should Know: Fully Baked - A Review of the Newly-Enacted Marihuana Regulation and Taxation Act

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Date: April 13, 2021 4:00 pm

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Marihuana Regulation and Taxation Act

Cannabis

Marijuana

Marihuana

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Cannabis Law

- Article 1, Legislative Findings & Intent
- Article 2, New York State Cannabis Control Board
- Article 3, Medical Cannabis
- Article 4, Adult-Use Cannabis
- Article 5, Cannabinoid Hemp and Hemp Extract
- Article 6, General Provisions

Cannabis Control Board

- Five Member Cannabis Control Board
 - Chair is nominated by the Governor with advice and consent of the Senate
 - Governor appoints 2 members
 - Senate appoints 1 member
 - Assembly appoints 1 member



Cannabis Control Board

- Geographically and demographically representative of the State and communities historically affected by the war on drugs
- Appoints the Chief Equity Officer responsible for compliance with the Social & Economic Equity Plan
 - Shall promulgate regulations to implement the Social and Equity Plan (§ 89)
- Shall develop regulations for use by the Office to determine whether or not an applicant should be granted the privilege of an initial adult-use cannabis license (§ 64)



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Office of Cannabis Management

- Executive Director is nominated by the Governor with the advice and consent of the Senate
- Independent office within the Division of Alcohol Beverage Control
- Exclusive jurisdiction to exercise power and duties of the chapter
- <https://cannabis.ny.gov>

State Cannabis Advisory Board (§ 14)

- Established within the Office of Cannabis Management
- Thirteen voting members appointed members
- Directed to work in collaboration with the Cannabis Control Board and the Executive Director to advise and issue recommendations
- Shall govern and administer the New York State Community Grants Reinvestment fund pursuant to Section 99-KK of the State Finance Law.



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Social and Economic Equity Plan (§ 87)

- The Board, after receipt of input, “shall create and implement a social and economic equity plan and actively promote applicants from communities disproportionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities, including mentoring potential applicants, by prioritizing consideration of applications by applicants who are from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, distressed farmers, or service-disabled veterans.”



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Social and Economic Equity Plan

The board's social and economic equity plan shall also promote diversity in commerce, ownership and employment, and opportunities for social and economic equity in the adult-use cannabis industry. A goal shall be established to award fifty percent of adult-use cannabis licenses to social and economic equity applicants and ensure inclusion of:

- a) individuals from communities disproportionately impacted by the enforcement of cannabis prohibition;
- b) minority-owned businesses;
- c) women-owned businesses;
- d) minority and women-owned businesses;
- e) distressed farmers; and
- f) service-disabled veterans.



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Social and Economic Equity Plan

The social and economic equity plan shall require the consideration of additional criteria in its licensing determinations. Under the social and economic equity plan, extra priority shall be given to applications that demonstrate that an applicant:

- a) is a member of a community disproportionately impacted by the enforcement of cannabis prohibition;
- b) has an income lower than eighty percent of the median income of the county in which the applicant resides; and
- c) was convicted of a marijuana-related offense prior to the effective date of this chapter, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of this chapter, was convicted of a marijuana-related offense.

Distressed Farmer Definition

- i. a New York state resident or business enterprise . . . that meets the small farm classification developed by the Economic Research Service of the United States Department of Agriculture, has filed a schedule F with farm receipts for the last three years, qualifies for an agriculture assessment and meets other qualifications defined in regulation by the board to demonstrate that they operate a farm operation . . . and has been disproportionately impacted, including but not limited to incurring operating losses, by low commodity prices and faces the loss of farmland through development or suburban sprawl and meets any other qualifications as defined in regulation by board; or
- ii. a New York state resident or business enterprise . . . that is a small farm operator and a member of a group that has been historically underrepresented in farm ownership and meets any other qualifications as defined in regulation by board.



Communities Disproportionately Impacted

- Shall mean, but not be limited to, a history of arrests, convictions, and other law enforcement practices in a certain geographic area, such as, but not limited to, precincts, zip codes, neighborhoods, and political subdivisions, reflecting a disparate enforcement of cannabis prohibition during a certain time period, when compared to the rest of the state.
- The board shall, with recommendations from the state cannabis advisory board, the chief equity officer and executive director, issue guidelines to determine how to assess which communities have been disproportionately impacted and how to assess if someone is a member of a community disproportionately impacted.

Adult-Use Cannabis Licenses

- Adult-Use Cultivator License (§ 68)
- Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary License (§ 68-a)
- Registered Organization adult-Use Cultivator, Processor and Distributor License (§ 68-b)
- Adult-Use Processor License (§ 69)
- Adult-Use Cooperative License (§ 70)
- Adult-Use Distributor License (§ 71)
- Adult-Use Retail Dispensary License (§ 72)
- Microbusiness License (§ 73)
- Delivery License (§ 74)
- Nursery License (§ 75)
- Adult-Use On-Site Consumption License (§ 77)



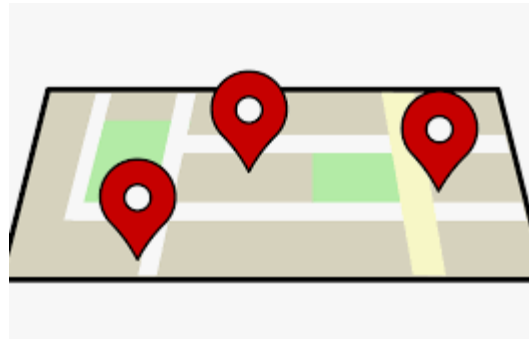
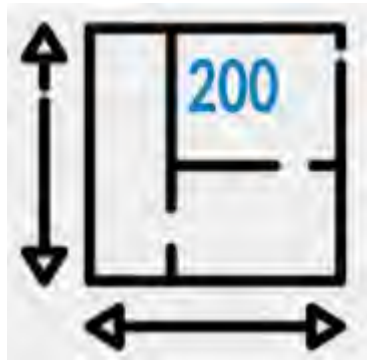
Municipal Notification (§ 76)

- Notification to municipalities of (1) adult-use retail dispensary, (2) registered organization adult-use cultivator processor distributor retail dispensary or (3) on-site consumption license not less than thirty days nor more than two hundred seventy days before filing an application
- Municipality can provide the Board with an opinion for or against the application



Location Limitations

- Retail dispensary storefronts and on-site consumption premises cannot be located within 500 feet of a school grounds as such term is defined in the Education Law or within 200 feet of a house of worship



**500
FEET**

Local Opt-Out (§ 131)

- CRTA allowed counties, and large cities, to prohibit the issuance of certain licenses
- MRTA now allows towns, cities and villages to prohibit the issuance of licenses for retail dispensary licenses and/or on-site consumption licenses



Local Opt-Out Procedure

- A municipality can adopt a local law, subject to permissive referendum governed by section twenty-four of the municipal home rule law, requesting the cannabis control board to prohibit the establishment of such retail dispensary licenses and/or on-site consumption licenses contained in article four of this chapter, within the jurisdiction of the town, city or village.
- Local Law must be adopted by December 31, 2021
- A prohibition local law can be repealed after the December 31, 2021 deadline

Permissive Referendum



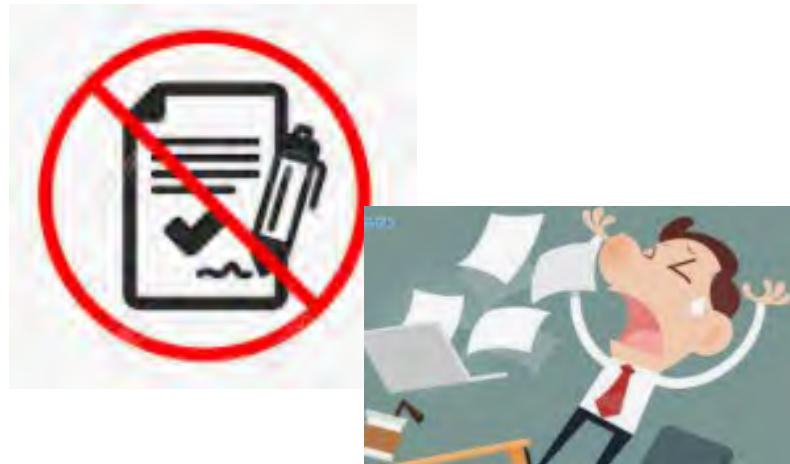
Municipalities Control and Preemption

- Counties, towns, cities and villages are preempted from adopting any law, rule, ordinance, regulation or prohibition “pertaining to the operation or licensure of” the business
- However, counties, towns, cities and villages “may pass local laws and regulations governing the time, place and manner of the operation of licensed adult-use cannabis retail dispensaries and/or on-site consumption sites, provided such law or regulation does not make the operation of such licensed retail dispensaries or on-site consumption sites unreasonably impracticable as determined by the board.”



Community Host Agreements

- The proposed CRTA specifically prohibited a municipality to require adult-use cannabis applicants to enter into a Community Host Agreement.
- MRTA is silent with regard to Community Host Agreements.



State Fiscal Impacts

- Under CRTA, the state would impose three taxes:
 - Per-milligram of THC: Edibles at \$0.04, concentrates at \$0.01 and cannabis flower at \$0.007,
 - A “surcharge” of 10.25%, and
 - State and local sales tax.
- Under MRTA, the state would impose three taxes:
 - Per-milligram of THC: Edibles at \$0.03, concentrates at \$0.008 and cannabis flower at \$0.005,
 - 9% state excise, and
 - 4% local excise tax***.
 - What about sales tax???

***Cue exciting foreshadowing music.

State Fiscal Impacts

- How much money are we talking about?
 - Governor says: \$350 million per year once fully operational.
 - When? First dispensaries probably hitting the street in 2023 (maybe sooner, maybe later.)

State Fiscal Impacts

- Where will all this state-level revenue go?
 - Administering the program, then the remainder:
 - 40% to Education (via Lotto Fund)
 - 40% to Community Grants Reinvestment Fund (99-kk)
 - 20% to Drug Treatment and Public Education Fund

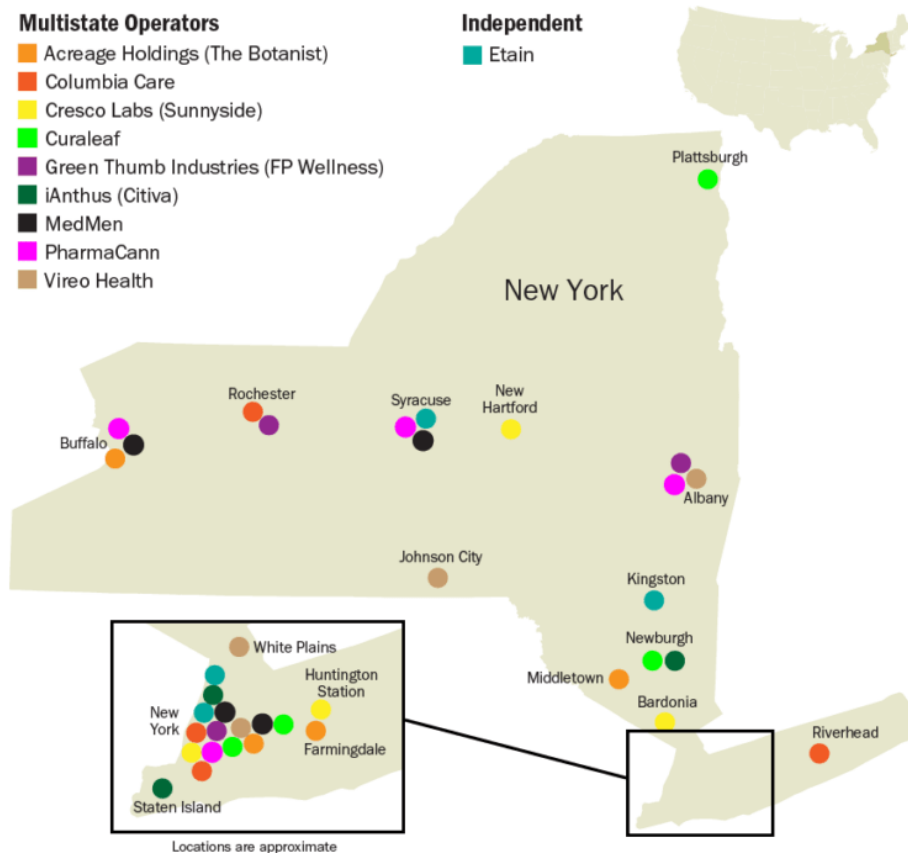
State Fiscal Impacts

- What about economic impacts for the state?
 - Governor says: “...legalization is projected to create more than 60,000 new jobs, [...] once fully implemented.”



Local Job Impacts

Multistate Operators Dominate New York's Medical Marijuana Industry



Source: New York Medical Marijuana Industry Association, New York Department of Health, the companies, regulatory filings
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- Medical = Highly concentrated, rigid, vertical integration. MRTA will effectively quadruple medical dispensaries and likely the same for sales.
- Adult-use = No vertical integration, likely many small dispensaries.

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Local Job Impacts

Cultivation/processing:

- Blending, extracting, infusing, packing, labeling, etc.
- While there may be many small, independent operators, there are also likely to be a few, very large installations from the national players in the adult-use market, carry-overs from the medical market dynamics.
- Large cultivation/processing combination facilities will be in industrial-type buildings that require significant electrical and water loads, and will include laboratories and climate-controlled storage.

Local Job Impacts

- Large processors:
 - \$100mm+ facilities are not uncommon
 - Major infrastructure required
 - 100+ direct jobs
 - They will be shopping around for workforce, sites with plenty of acreage (not existing buildings, since these are custom installations), security, welcoming community. Will may ask for a PILOT abatement.
 - Conclusion: potentially, hundreds of thousands of dollars in property tax revenue per year and hundreds of jobs.

Deals are already happening!



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Local Job Impacts

Dispensaries:

- Game theory tells us there will be complexity:
 - What did our neighboring states do?
 - How close are you to PA? CT? OH?
 - Where are you relative to an interstate highway?
 - Did your community choose to legislate in or out?
 - What about your neighbors?

The answers will determine how many dispensaries you would likely see in a given place.

Local Tax Impacts



Local Tax Impacts

- What about local tax benefits of the MRTA?
- Counties – 1% of sales
- Cities/Towns/Villages – 3% of sales

- How much is that? Depends on:
 - Your legislative actions
 - Whether you get one or more successful dispensaries
 - Geographic luck

Local Tax Impacts

So, counties will get 1% of sales (25% of the 4% local excise tax.)

Counties cannot opt-out, so most will receive some revenue unless every city/town/village within the county opts out.

496-b (b) (2) [...] counties shall be entitled to retain twenty-five percent of the monies so distributed.



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Local Tax Impacts

Cities and towns will get 3% of sales (the remainder of the 4% local excise tax) for sales that occur within their jurisdiction.*

*Wait, what about towns that have villages within them?

496-b (b) (2) [...] Such counties shall distribute the remaining seventy-five percent of such monies to the towns, villages, and cities within such county in which a retail dispensary is located in proportion to the sales of adult-use cannabis products by the retail dispensaries in such towns, villages and cities

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Local Tax Impacts

Villages are a special case:

- Villages where the town has opted out – Village retains 100%
- Villages where the town has not opted out – Village and town split the revenue by agreement or 50/50 if no agreement.
- But, what about Villages that span two or more towns? Presumably the money would go to the Town where the dispensary is located.

496-b (b) (2) [...] provided, however, where a retail dispensary is located in a village within a town **that both permit cannabis retail sales**, then the county shall distribute the monies [...] in such proportion as may be agreed upon by the elective governing body of such town and of such village or, **in the absence of such an agreement, shall evenly divide** such monies between such town and village.



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Local Tax Impacts

When? Distributed quarterly.

496-b (b) (2) [...] Such counties shall distribute the monies received for each quarter ending on the last day of February, May, August or November to such towns, villages and cities no later than the thirtieth day after receipt of such monies from the comptroller.

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Local Tax Impacts

How much tax revenue for the locals?

Let's talk about "Loopers"

- These are out-of-state "consumers" who travel to NY to purchase the maximum allowable quantity at each retail location to re-import into their home state (probably not just for their own personal use.)
- Communities in "geographically lucky" areas could easily pull down \$1-2 million collectively in excise tax, even if relatively sparsely populated.
- See outlying counties in Colorado for examples.

Local Tax Impacts

- More modest returns for the “geographically normal” communities, based on local demand and flows. How much?

“The state could capture and tax [... sales of] \$4.2 billion by 2027” – NYTimes.

- Per capita, that is \$215 in sales, \$2.15 in county revenue and \$6.45 in local government revenue.
- Again, it all depends on your “trade area” i.e. the area from which you pull customers.
- If your “trade area” has 25,000 people, your local government could see ~\$160,000 in excise tax revenue alone.

<https://www.nytimes.com/2021/03/25/nyregion/ny-legalize-marijuana.html#:~:text=The%20cannabis%20market%20in%20New, York%20Medical%20Cannabis%20Industry%20Association> .



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Local Tax Impacts

Other sources of revenue:

- Are these sales also subject to the normal sales tax?
Unclear, awaiting clarification from the governor's office.
- PILOT payments being made by cultivators/processors.
- Host community benefit agreements?
- Indirect benefits resulting from increased visitation-related spending (on-site consumption).
- Property tax paid on retail dispensaries.

Questions?



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Disclaimer:

- *This presentation is for informational purposes and is not intended as legal advice.*
- *Please remember that under federal law, the possession, use, distribution or sale of non-hemp cannabis and cannabis-based products is illegal despite certain state laws that decriminalize such activity. While federal enforcement policy may defer to a state's laws and not enforce conflicting federal laws, the fact remains that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.*



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