



Whiteman Osterman & Hanna LLP
Land Use and Municipal Considerations of the Cannabis Law
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On March 31, 2021, Governor Andrew Cuomo signed the Marihuana Regulation and Taxation Act (“Cannabis Law”¹) into law, legalizing adult-use cannabis in New York. The Cannabis Law has significant land use implications that municipalities and potential business owners should be aware of.²

The Cannabis Law establishes an Office of Cannabis Management,³ which will oversee implementation of the new law, and a Cannabis Control Board,⁴ which has the authority to grant licenses for the cultivation, processing, distribution, delivery, and retail dispensing of cannabis throughout New York. The Cannabis Control Board has set a goal of awarding fifty percent (50%) of adult-use cannabis licenses to “social and economic equity applicants” and ensuring the inclusion of:

- Individuals from communities disproportionately impacted by the enforcement of cannabis prohibition;
- Minority-owned businesses;
- Women-owned businesses;
- Minority and women-owned businesses;
- Distressed farmers; and
- Service-disabled veterans.⁵

*Cannabis-Related License Types*⁶

The Cannabis Law creates a two-tier licensing structure which separates the production (including cultivation, processing, and distribution) of adult-use cannabis from its retail sale to consumers.

¹ N.Y. Canbs. Law § 1.

² This newsletter is for informational purposes only, not for the purpose of providing legal advice.

³ N.Y. Canbs. Law § 8.

⁴ N.Y. Canbs. Law § 7.

⁵ N.Y. Canbs. Law § 87.

⁶ This section provides only a general overview of license types. Each license type has its own set of restrictions. Many license types limit owners to only one (1) license and prohibit owners from having an interest in other parts of the cannabis business.

Under the Cannabis Law, with limited exceptions, a person authorized to cultivate, process, or distribute cannabis may not be directly or indirectly interested in any premises where cannabis is sold at retail, including for on-site consumption, or in any business devoted to the retail sale or delivery of cannabis.⁷ The law provides for many different types of cannabis-related licenses on both the production and retail side, including:

Production:

- Nursery licenses,⁸ which authorize the production, sale, and distribution of clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis by licensed adult-use cultivators, cooperatives, microbusinesses, or registered organizations.
 - A person or entity holding an adult-use cultivator’s license may apply for, and obtain, one nursery license to sell directly to other cultivators, cooperatives, microbusinesses, or registered organizations.
- Adult-use cultivator licenses,⁹ which authorize the acquisition, possession, distribution, cultivation and sale of cannabis from licensed cultivators to licensed processors.
 - “Cultivation” includes the planting, growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis.
 - Holders of such licenses may apply for one processor’s license and one distributor’s licenses solely to distribute their own products.
- Adult-use processor licenses,¹⁰ which authorize the acquisition, possession, processing, and sale of cannabis from licensed processors to licensed distributors,
 - “Processing” includes blending, extracting, infusing, packaging, labeling, branding and otherwise making or preparing cannabis products.
 - Holders of such licenses may apply for one distributor’s license solely to distribute their own products,
- Adult-use distributor licenses,¹¹ which authorize the acquisition, possession, distribution and sale of cannabis from a licensed adult-use cultivator, processor, adult-use cooperative, microbusiness, or registered organization to duly licensed retail dispensaries and on-site consumption sites.

Retail:

- Adult-use retail dispensary licenses,¹² which authorize the acquisition, possession, sale and delivery of cannabis to consumers.

⁷ N.Y. Canbs. Law § 80.

⁸ N.Y. Canbs. Law § 75.

⁹ N.Y. Canbs. Law § 68.

¹⁰ N.Y. Canbs. Law § 69.

¹¹ N.Y. Canbs. Law § 71.

¹² N.Y. Canbs. Law § 72.

- Holders of such licenses are not permitted to sell alcoholic beverages on the same premises where cannabis products are sold.¹³
- No person may own more than three (3) retail dispensary licenses.
- Retail dispensaries may not be located within five hundred (500) feet of a school or within two hundred (200) feet of a house of worship.
- Adult-use on-site consumption licenses,¹⁴ provided that:
 - No person may have a direct or indirect financial or controlling interest in more than three (3) adult-use on-site consumption licenses;
 - No person holding an adult-use on-site consumption license may also hold an adult-use retail dispensary, cultivation, processor, microbusiness, cooperative or distributor license; and
 - No applicant shall be granted an adult-use on-site consumption license for any premises within five hundred (500) feet of a school or two hundred (200) feet from a house of worship.

Other license types:

- Adult-use cooperative licenses,¹⁵ which authorize the acquisition, possession, cultivation, processing, distribution and sale of cannabis to duly licensed distributors, on-site consumption sites, registered organization and/or retail dispensaries; but not directly to cannabis consumers.
- Microbusiness licenses,¹⁶ which authorize the limited cultivation, processing, distribution, delivery, and dispensing of their own adult-use cannabis and cannabis products.
- Delivery licenses,¹⁷ which authorize the delivery of cannabis and cannabis products by licensees independent of another adult-use cannabis license.
 - Registered organization adult-use cultivator processor distributor retail dispensary licenses¹⁸ and registered organization adult-use cultivator, processor and distributor licenses,¹⁹ which are available only to registered organizations which are authorized to manufacture and dispense medical marijuana.
 - Cannabinoid-hemp processor²⁰ and retailer²¹ licenses, which authorize activities related to the processing and sale of cannabinoid hemp²² into products used for human consumption.

¹³ N.Y. Canbs. Law § 85(3).

¹⁴ N.Y. Canbs. Law § 77.

¹⁵ N.Y. Canbs. Law § 70.

¹⁶ N.Y. Canbs. Law § 73.

¹⁷ N.Y. Canbs. Law § 74.

¹⁸ N.Y. Canbs. Law § 68-a.

¹⁹ N.Y. Canbs. Law § 68-b.

²⁰ N.Y. Canbs. Law § 92.

²¹ N.Y. Canbs. Law § 93.

²² “Cannabinoid hemp” is defined as “any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.” N.Y. Canbs. Law § 3(3).

Municipal Considerations

Applicants who intend to apply for (i) adult-use retail dispensary, (ii) registered organization adult-use cultivator processor distributor retail dispensary, or (iii) on-site consumption, must notify the municipality in which the licensed establishment will be located at least thirty (30) days, but no more than two hundred seventy (270) days, before filing the application.²³

Perhaps the most important provision of the Cannabis Law for municipalities to be aware of is the “local opt-out” provision.²⁴ Town, cities, and villages may adopt a local law requesting that the Cannabis Control Board prohibit the establishment of retail dispensaries and/or on-site consumption licenses within their jurisdiction.²⁵ Such law must be adopted on or before December 31, 2021 and will be subject to permissive referendum under the Municipal Home Rule Law.²⁶ Municipalities who adopt opt-out laws may later “opt-in” by repealing those laws after December 31, 2021. Notably, the Cannabis Law does not provide a similar “opt-out” provision for cultivator, processor, nursery, distributor, or delivery licenses. Accordingly, it does not appear that local municipalities, under the Cannabis Law, are able to prohibit all cannabis-related land uses within its geographic boundaries.

Municipalities that choose to allow adult-use retail dispensaries and on-site consumption establishments may retain some control over those establishments within their jurisdiction by passing 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, as long as such laws and regulations do not make the operation of such establishments unreasonable impracticable.²⁷ The Cannabis Law also contains a preemption provision limiting the authority of municipalities to pass other cannabis-related laws.²⁸ Except for opt-out laws or reasonable time, place, and manner restrictions on dispensaries and on-site consumption sites, municipalities cannot adopt any laws, rules, or ordinances pertaining to the operation or licensure of registered organizations, adult-use cannabis licenses or cannabinoid hemp licenses.²⁹

Municipalities which are home to New York State Certified Agricultural Districts should be aware of the additional protections afforded to hemp³⁰ farmers under New York law. Under New York

²³ N.Y. Canbs. Law § 76.

²⁴ N.Y. Canbs. Law § 131(1).

²⁵ Municipalities that opt out of allowing adult-use retail establishments in their jurisdictions will not be entitled to revenue from the four (4) percent local excise tax imposed on the sale of cannabis products by retailers to consumers. N.Y. Tax Law § 493(3)(c) (effective April 1, 2022). The revenue will be distributed to local governments based on where the retail dispensary is located: twenty-five (25) percent to the county and seventy-five (75) percent to the cities, town, or villages within the county that allow adult-use sales. N.Y. Tax Law § 496-b(2).

²⁶ Under § 24 of the Municipal Home Rule Law, a local law subject to permissive referendum must be approved by a majority vote if a petition protesting the law is filed within forty-five (45) days after the law’s adoption.

²⁷ N.Y. Canbs. Law § 131(2).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Under both the Cannabis Law and Agricultural & Markets Law, “hemp” is defined as “the plant *Cannabis sativa* L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than three-tenths of a percent on a dry weight basis.” N.Y. Canbs. Law. § 3(27); N.Y. Agric. & Mkts Law § 505(1).

Agricultural and Markets Law, local governments are prohibited from administering comprehensive plans or passing local laws, ordinances, rules, or regulations which unreasonably restrict farm operations within designated agricultural districts.³¹ The term “farm operations” includes “practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.”³² Hemp is a “crop” under the New York Agricultural and Markets Law.³³ Therefore, local governments may not unreasonably restrict hemp farm operations in designated agricultural districts within their borders. However, the legislature has not yet amended the law to add “cannabis” to the definition of a “crop.”

If you would like assistance with the Cannabis Law to understand the land use implications for municipalities and/or potential business owners, please contact Robert Stout 518.487.7730 or Daniel Hubbell 518.487.7692.

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³¹ N.Y. Agric. & Mkts. Law § 305-a.

³² N.Y. Agric. & Mkts. Law § 301(11).

³³ N.Y. Agric. & Mkts. Law § 301(2)(1).