

NEW YORK ZONING LAW AND PRACTICE REPORT



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CANNABIS AND LAND USE AND ZONING REGULATION IN NEW YORK**

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INTRODUCTION

On March 31, 2021, New York became the 15th state to legalize adult use cannabis with the enactment of the Marihuana Regulation and Taxation Act MRTA (short title, “cannabis law”).¹ It is anticipated that local governments will not see the sale of recreational cannabis until late 2022 or early 2023. This article is designed to update the new chapter, Chapter 14-A, in the New York Zoning Law and Practice Treatise to provide continued early guidance based on what is known at this point and to the extent it may be relevant, based on regulations, policy and local governance of cannabis in states with similar adult-use statutes.

OPT-OUT PROVISION UPDATE

Section 131 of the (MRTA) provided for an opt-out provision allowing local governments to prohibit adult-use cannabis retail dispensaries or on-site consumption businesses from their jurisdiction. This provision specifically

**This article was written in February 2022 and the regulations governing licensure and other aspects of recreational marijuana have not yet been published. Please note rapid developments are expected before the next chapter update. Also, parts of this chapter incorporate previously published work from the New York Zoning Law and Practice Report related to marijuana and land use in New York. See, Salkin, “Marijuana and Land Use,” Chapter 14A 2 N.Y. Zoning L. & Prac. Rep. 1 (2021).

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required municipalities to opt-out by December 31, 2021 by enacting a new local law specifically referencing an opt-out to the new State regulatory framework. The local law must have been adopted (voted on) by the local legislative body on or before December 31, 2021. Further, if a municipality opted out, the governing body could, at any point in the future, repeal the opt-out local law. Such repeal would also be subject to permissive referendum. If a municipality did not opt out by the deadline, however, it would not be permitted to opt-out in the future.

The incentive for local governments to permit retail dispensaries and onsite consumption facilities within their jurisdictions is manifested in a tax revenue split that will provide welcome benefits during challenging economic times, rising municipal costs, and a property tax cap that makes sales tax growth desirable.² It is important to note that these opt outs do not impact the legality of cannabis within the municipal borders and do not prevent cannabis cultivation, processing and other non-retail activities.

A total of 769 of the 1520 New York municipalities chose to opt out of both retail dispensaries and onsite consumption facilities.³ Approximately 884 municipalities opted out of allowing on-site consumption businesses but allowed retail dispensaries within their jurisdictions.⁴

The absence of draft adult-use regulations providing additional details of the retail programs and the option to later “opt-in” to retail dispensaries and onsite consump-

tion facilities were critical factors playing into municipalities’ decisions to opt out.⁵ Many municipal leaders and legislative bodies felt they did not have enough information and were not sufficiently educated on the adult-use cannabis program to allow for retail dispensaries and onsite consumption facilities within their jurisdictions.⁶

OFFICE OF CANNABIS MANAGEMENT AND CANNABIS CONTROL BOARD UPDATE

The MRTA created an Office of Cannabis Management (OCM)⁷ as an independent entity within the Division of Alcoholic Beverage Control. The OCM is providing a comprehensive regulatory framework governing the cultivation, processing, manufacturing, distribution, transportation and sale of cannabis in New York, including medical, adult use and cannabinoid hemp.⁸ The OCM is governed by a five-member Cannabis Control Board (CCB).⁹ The OCM will administer the State’s cannabis program and comprehensively regulate and control the cultivation, processing, manufacture, distribution, transportation, and sale of cannabis in New York State,¹⁰ including medical, adult-use and cannabinoid hemp.¹¹

The CCB is tasked with creating the State’s cannabis industry and is the approval and oversight body for the OCM. The CCB will choose to limit the number of licenses for each class of cannabis license to be issued in New York and determine if there will be any limits on licenses issued by geographic area. The CCB will also be responsible for approving regulations that will govern the cannabis industry and issuing applications and licenses to cannabis businesses.¹² During Governor Kathy Hochul’s first few months in office, she declared that “New York’s cannabis industry has stalled for far too long—I am making important appointments to set the Office of Cannabis Management up for success so they can hit the ground running.”¹³ With that, appointments to the CCB were made within months and by the Fall of 2021, all five members were appointed.¹⁴ The CCB is comprised of: Reuben R. McDaniel, III,¹⁵ Jessica Garcia,¹⁶ Jen Metzger,¹⁷ Adam Perry¹⁸ and Chairperson Tremaine Wright.¹⁹ These appointments are geographically and demographically representative of the State and communities historically impacted by the criminal prosecution of cannabis offenses. Shortly after the appointments were made, on October 5, 2021, the CCB held its first regular meeting and appointed

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Jason Starr²⁰ as Chief Equity Officer of the OCM. The Chief Equity Officer is charged with establishing a social and economic equity program to prioritize licensing for members of communities disproportionately impacted by the War on Drugs.²¹ The CCB meets monthly and to date, has primarily focused on policy development.²² At the end of February 2022, the Office of Cannabis Management completed a series of 11 virtual community outreach events, a link to the recordings is posted on their website.²³

STATUS OF CANNABIS REGULATIONS

At the time of this writing, the State of New York is just beginning to devise a framework for the regulatory oversight of adult use cannabis. To date, only drafts of the expanded medical cannabis regulations²⁴ and amendments to the existing cannabinoid hemp regulations²⁵ have been published.

On February 22, 2022, Governor Hochul signed legislation creating a new Conditional Adult-use Cannabis Cultivator license that establishes a way for existing New York hemp farmers to apply for conditional licenses to grow cannabis in the 2022 growing season for consumption in the emerging adult-use cannabis market.²⁶ The law requires these licensees to meet specific requirements for safe, sustainable and environmentally friendly cultivation practices and requires participation in a social equity mentorship program as well as engagement in a labor peace agreement with a bona fide labor organization.²⁷ The social equity mentorship program will create a path for social and economic equity partners interested in cultivation to gain experience in the industry.²⁸ New York Assembly Majority Leader Crystal Peoples-Stokes said the bill will “create a responsible start to the adult-use cannabis industry”²⁹ and many lawmakers are supportive of this method to ensure a sufficient amount of sun-grown, safe, regulated and environmentally conscious cannabis products to meet the demand of the adult-use market when dispensaries open.³⁰

Please note that chapter 14-A will be supplemented once the draft adult-use regulations become available for review.

LOCAL ZONING REGULATION OF CANNABIS

The MRTA delegates to local municipalities the ability

to regulate time, place and manner of the operation of retail dispensaries and onsite consumption sites (“retail establishments”), as long as such regulation does not render the business unreasonably impracticable.³¹ The OCM has issued guidance providing that municipalities may pass laws pertaining to the local zoning and location of licensees, hours of operations and adherence to local building codes.³² Municipalities may not require local licenses for cannabis businesses.³³

Based on the MRTA provisions regarding municipal time, place and manner restrictions on adult use retail establishments³⁴ and a review of municipal zoning regulations in states with similar adult-use cannabis programs, educated assumptions can be made regarding the details of local limitations. Until the adult-use cannabis regulations are adopted, however, the full impacts on local planning and zoning will not be known.

i. LOCAL LIMITATIONS TO RESTRICT THE LOCATION AND NUMBER OF RETAIL BUSINESSES

A review of local regulations in other states with similar adult-use cannabis statutes demonstrates that local zoning ordinances are the most common and most effective way to impose time, place and manner regulations on cannabis businesses. A further limited survey of zoning regulations in Massachusetts, Illinois and Colorado indicates that popular restrictions include limiting the number of retailers and onsite consumption facilities permitted within the municipality and further, to limit the distance between those businesses in linear feet. Common distances imposed between dispensaries ranged from 750 - 1,800 feet, with 1,500 feet being most popular.³⁵ These distances were measured from nearest property lines, not buildings or main entrances.³⁶ The maximum number of dispensaries per municipality averaged from 3-4.³⁷

Some municipalities make exceptions to both the number of establishments permitted and the minimum distance between businesses for dispensaries owned by social equity applicants.³⁸ In New York, this approach would further support the businesses of social and economic equity applicants, as defined in the MRTA, as those owned by individuals from communities disproportionately impacted by cannabis enforcement (with extra priority to those who have been convicted of cannabis offenses), minorities, women, distressed farmers and service-

disabled veterans. This is one unique approach to furthering social justice and encouraging small businesses owned by such applicants within a municipality.

Municipal approaches to amending the zoning map to define areas appropriate for cannabis businesses include a variety of methods including:

- Amending the permitted uses within existing zoning districts. This method involves identifying existing zoning districts that would be appropriate for cannabis businesses (typically in commercial, industrial and mixed-use areas and not residential areas). Notably, exceptions have been made to allow social equity applicants to operate in more districts than non-social equity owned businesses.³⁹
- Creating an overlay district to allow cannabis uses within a certain area of the municipality that will not extend to other areas with the same zoning classification.⁴⁰
- Creating several “cannabis districts” within a municipality to ensure even distribution of cannabis businesses.⁴¹ This method allows the municipality to have different standards and regulations for each cannabis district, as opposed to a traditional overlay zone, which would typically have one set of standards applying to all cannabis businesses. This is an option best-suited for cities or municipalities with complex zoning regulations.

In addition to amending the local zoning ordinance to permit the cannabis business uses, municipalities also have amended the law to restrict other uses permitted at the site of a cannabis operation. Most commonly, a lot where a dispensary is operated cannot have any other uses onsite.⁴² Applicants should be aware of this limitation when considering potential locations since many options for both lease and purchase may have residential units above the ground floor or may be located adjacent to other retailers, such as space in a shopping center.

ii. LIMITING HOURS OF OPERATION

Another key aspect of zoning amendments made specifically for cannabis businesses seen in other states are the limitations of hours, both in hours of operation and hours for deliveries. Mostly, businesses were prohibited from operating overnight, with the majority requiring dis-

pensaries to close for business between 8 PM - 10 PM.⁴³ Deliveries were often limited to early morning hours (ex-7 AM - 9 AM).⁴⁴

While the MRTA gives the Cannabis Control Board (“CCB”) authority to limit hours of operation for retail establishments in the forthcoming regulations,⁴⁵ and the OCM’s guidance for NY municipalities provides that localities may pass laws limiting hours of operations, there are potential legal challenges associated with such restrictions. A recent 2021 Department of State Office (“DOS”) of General Counsel memorandum may prohibit municipalities from further regulating hours of operation beyond what will be provided for in the regulations.⁴⁶ Based on the DOS memorandum and case law, planning and zoning boards are unable to regulate the hours of operation of a business, as an attempt to regulate the internal operations, unless there is substantial evidence in the record that demonstrates that the conditions being imposed are directly related to the use of the property and the conditions regulating hours of operation were necessary to mitigate adverse impacts on the surrounding neighborhood.⁴⁷ The DOS memorandum further addresses whether legislative acts [from a City Council or Board of Trustees] could establish the hours of operation through zoning legislation or the application of its police powers. Therefore, New York municipalities should be cautious about further restricting the hours of cannabis businesses beyond the limits that will be set forth in the CCB’s regulations.

iii. MUNICIPAL ENTITLEMENT PROCESS FOR RETAIL CANNABIS BUSINESSES

The municipal entitlement process for retail establishments typically includes site plan review and approval and the issuance of a special permit from the Planning Board.⁴⁸ Typically for non-cannabis businesses, final municipal approvals are granted after the required State licenses are obtained, but the local approval process is commenced simultaneously for efficiency.

The MRTA requires that an applicant provide the municipality of notice of intent to file an application for adult-use cannabis license at least 30 days prior to submitting the license application and affords the municipality the opportunity to comment on the application.⁴⁹ The forthcoming regulations on adult-use cannabis will likely include more details on the timing of municipal comment

on applications as well as the license approval process. It is recommended that applicants engage in pre-application discussions with the municipality well in advance of the 30-day deadline to provide notice of intent to file the application. During these discussions, timing of the municipal approval process and applicable site plan and special permit standards should be reviewed.

iv. LOCAL TIME, PLACE AND MANNER RESTRICTIONS

Basic dimensional requirements provided for in zoning ordinances are typically amended to include explicit restrictions for cannabis businesses. Specifically, many local zoning regulations in other states limit the maximum gross floor area for dispensaries.⁵⁰ Common restrictions average approximately 3,000 square feet and some municipalities further limit the max floor area that can be open to the public.⁵¹ Yard setbacks are other common dimensional requirements amended to specifically address cannabis businesses.⁵² Aside from setbacks of the main entrance to property lines, municipalities can also enact setbacks from other uses beyond the schools and house of worship restrictions included in the MRTA. Common setbacks include distance from a park, playground, athletic field, daycare facilities, and alcohol and drug treatment facilities.⁵³ These minimum distances range from 300 feet to 1,500 feet and many zoning ordinances permit the Planning Board to vary the distance based upon a finding of no substantial impact or for social equity applicants.⁵⁴ In some of the zoning ordinances surveyed, specific off-street parking requirements were enacted for cannabis businesses and varied greatly, ranging anywhere from 1 space per 200 - 1,000 square feet of retail.⁵⁵

There is also the option for a municipality to prohibit a building that is nonconforming with the existing dimensional requirements to be used for a cannabis business. This could be an effective tool to ensure that buildings with inadequate setbacks and lot size, two factors that may lead to complaints and conflicts with surrounding uses, do not get repurposed for a cannabis use.⁵⁶

v. SITE PLAN AND SPECIAL PERMIT STANDARDS—ANTICIPATED LOCAL TIME, PLACE AND MANNER RESTRICTIONS

While the site plan review involves a detailed analysis of location-specific details, the special permit standards

for cannabis businesses apply generally to all applicants to ensure the proposed business will comply with specified operating, design and reporting standards for cannabis businesses. Therefore, it can be anticipated that popular zoning code amendments will include special permit standards specific to cannabis establishments that focus on time, place and manner restrictions. It can reasonably be expected that both the site plan and special permit process for cannabis applicants will require a public hearing which encourages community participation and comment. Municipalities should anticipate widespread public interest and applicants should expect a detailed and complex review process.

Typical site plan application requirements include:⁵⁷

- Letter from Chief of Police confirming a review of and acceptance of the security plan;
- Detailed floor plans, including square footage;
- All signage proposed;
- Pedestrian and vehicular impact study;
- Odor control plan;
- Traffic control plan with estimated trips per hour, including opening day, weekends and the first 6 months of operation;
- Decommissioning plan; and
- Written plans for operating, water use, waste disposal, light pollution, transportation/delivery, energy efficiency, security.

An important site plan consideration when reviewing design and security of a proposed business will be the exterior view of the building. For instance, the regulations will likely require—and security protocols will almost certainly dictate—that sales and product not be visible offsite or from a public right of way. A municipality will likely want to balance this security with its goal of street-activation to encourage walkability and ensure safety. One option is to encourage applicants minimize opaque facades and instead use public art displays or other measures to screen retail areas in order to activate street frontages.⁵⁸

Another common and significant local zoning requirement seen in municipalities in other states with legal adult use cannabis programs is a provision that prohibits retail

cannabis businesses from being located within a pre-existing nonconforming building. Essentially, this provision prevents cannabis businesses from operating in a building that pre-dates zoning restrictions and does not conform with the applicable dimensional requirements, such as maximum height, setback, lot size and floor area. The objective of such a provision is to minimize impacts to adjacent properties and the surrounding area. Since it may not be readily apparent whether a building is fully zoning-compliant, applicants should engage zoning counsel to complete a zoning analysis on a parcel before entering into a lease or contract to purchase.

Further, some municipalities choose to enact a restriction that prohibits a cannabis business from operating on a parcel with any other uses. Applicants should be aware of this limitation when considering potential locations since many options for both lease and purchase may have residential units or office space above the ground floor or may be in building with other retail tenants, such as space in a shopping center or strip mall.

The majority of local municipalities in New York have not yet amended their local ordinances to address cannabis uses, but it is anticipated that they will do so over the next several months after the State releases draft regulations on the adult-use of cannabis.

ADULT-USE LICENSING SCHEME

i. ADULT-USE LICENSE TYPES

The MRTA creates 7 general categories of adult-use licenses, with several sub-categories associated with each level. Cultivator licenses authorize the growing, planting, cloning, harvesting, drying, curing, grading and trimming of cannabis.⁵⁹ Processor licenses authorize the acquisition, possession, processing and sale of cannabis from a cultivator to another processor or to a distributor.⁶⁰ Processing includes blending, extracting, infusing, packaging, labeling, branding and preparing cannabis products.⁶¹ Distributor licenses authorize the acquisition, possession, distribution and sale of cannabis from a processor to retail dispensaries and onsite consumption sites.⁶²

Retail dispensary licenses authorize the acquisition, possession, sale and delivery of cannabis from the licensed premises of the dispensary to cannabis consumers.⁶³ The MRTA limits the number of dispensary licenses an indi-

vidual can have a direct or indirect financial or controlling interest to no more than three dispensaries.⁶⁴ Note that while the statute includes delivery within the scope of operations for a dispensary, it is unclear whether that includes direct delivery of product directly to consumers. Onsite consumption licenses authorize the consumption of cannabis within a licensed area.⁶⁵ Similar to retail dispensary restrictions, no individual may have an interest in more than three onsite consumption licenses.⁶⁶

Delivery licenses authorize the delivery of cannabis by licensees independent of another adult-use cannabis license.⁶⁷ Each delivery licensee may have a maximum of 25 individuals providing full time paid delivery services to cannabis consumers per week.⁶⁸ Nursery licenses authorize the production, sale and distribution of clones, immature plants, seeds and agricultural products used for cultivation.⁶⁹

New York's adult-use program prohibits vertical integration to encourage small business, diversify the market and support its social equity program.⁷⁰ Therefore, for example, a cultivator licensee is prohibited from holding a dispensary license and vice versa.

The statute also creates cooperative⁷¹ and microbusiness licenses,⁷² however such activities are narrowly defined and not further detailed. The forthcoming regulations will provide further clarity on the details and scope of such licenses.

ii. SOCIAL EQUITY

In New York, 50% of each type of license category will be issued to social equity applicants, defined to include individuals from communities disproportionately impacted by the enforcement of cannabis offenses, minority and women-owned businesses, distressed farmers and service-disabled veterans.⁷³ The State is creating a state-run business incubator and in the 2022 State of the State Address, Governor Hochul announced plans to create a \$200 million public-private fund to support social equity applicants.⁷⁴

iii. MUNICIPAL NOTIFICATION AND SUPPORT

Applicants for adult-use retail dispensary or on-site consumption licenses must notify the municipality at least 30 days prior to applying for such license.⁷⁵ The municipality will express an opinion in favor or against granting of

the license and such opinion will be deemed part of the record and used by OCM to determine whether to grant the license.⁷⁶ This requirement encourages prospective applicants to have conversations with municipal officials and land use boards early in the process regarding their plans to operate retail establishments within the jurisdiction.

iv. LICENSE APPLICANTS MUST HAVE A LOCATION SECURED

The MRTA requires applicants seeking retail licenses to have identified the location for their business at the time the license application is submitted.⁷⁷ Specifically, the applicant must either own the property, have a valid lease in place or provide proof that they will possess the property within 30 days of being granted a license for a term that equals the license period (which is renewed every 2 years). This requirement severely limits the viable locations for cannabis businesses, given the legal and tax complications associated with seeking a mortgage from a federally backed bank or leasing from a property owner who is paying a mortgage on the premises.

This requirement also leaves applicants in the risky situation of securing a location at a potentially significant cost and outlay of capital without even being granted a license and leads to many unanswered questions about where they should purchase or lease property. These concerns are compounded by the fact that a handful of communities have already opted out of allowing retail dispensaries and on-site consumption sites within their jurisdiction, with more communities expected to opt-out before the end of the year when the deadline to do so expires.

CONCLUSION

Regulations relating to the business of cannabis cultivation and retail sales are unfolding at a rapid pace in New York. Municipal attorneys must stay on top of these developments to ensure that local land use and zoning regulations are developed and amended to meet the desired community results.

ENDNOTES:

¹Ch. 92 of the New York Laws of 2021 (A. 1248-A/S. 854-A) (available at: <https://legislation.nysenate.gov/pdf/bills/2021/s854a>). While recreational marijuana use remains illegal in the vast majority of states and under federal law, 33 states, the District of Columbia, Guam,

Puerto Rico and the Virgin Islands now allow for comprehensive public medical marijuana and cannabis programs (See, State Medical Marijuana Laws, National Conference of State Laws, (3/10/2020). <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>). Now 16 states and territories have legalized marijuana for recreational use for adults over the age of 21 (Washington, Oregon, Nevada, California, Colorado, Alaska, Arizona, South Dakota, Maine, Michigan, Illinois, District of Columbia, Guam, Vermont, Massachusetts and New York).

²In addition to a new 9% excise tax for state purposes, there would be a new 4% excise tax for local government purposes which would be imposed on the retail sale of adult-use cannabis products. The revenue from the 4% tax will be distributed quarterly to each county and each county will be entitled to retain 25% of such revenue. The remaining 75% of the revenue would be distributed quarterly by the counties to the cities, villages and towns 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 cities, villages and towns. Where a retail dispensary is located in a village within a town that also permits cannabis retail sales, then the county shall distribute the monies attributable to such retail dispensary to the town and village in such proportion as agreed upon by the governing body of such town and village or, in the absence of such an agreement, the money shall be evenly divided between the town and the village. The tax rates vary depending on the form of cannabis product. Edibles will be taxed at \$0.03 per milligram of total THC, concentrates such as vaporization and oil will be taxed at \$0.008 per milligram of total THC and cannabis flower (including pre-rolls) will be taxed at \$0.0005 per milligram of total THC. See NY OCM, Local Government Fact Sheet, Sep. 21, 2021, available at: <https://cannabis.ny.gov/system/files/documents/2021/09/cannabis-management-fact-sheet-9-21-local-government-06.pdf> for further details on taxation.

³Rockefeller Institute of Government, Marijuana Opt Out Tracker, <https://rockinst.org/issue-areas/state-local-government/municipal-opt-out-tracker/>

⁴Rockefeller Institute of Government, Marijuana Opt Out Tracker, <https://rockinst.org/issue-areas/state-local-government/municipal-opt-out-tracker/>

⁵Dec. 22, 2021, More Communities Opt Out of Marijuana Business as Deadline Nears, Times Union, <https://www.timesunion.com/news/article/new-york-marijuana-opt-outs-16722011.php>

⁶Dec. 22, 2021, More Communities Opt Out of Marijuana Business as Deadline Nears, Times Union, <https://www.timesunion.com/news/article/new-york-marijuana-opt-outs-16722011.php>

⁷See, <https://cannabis.ny.gov/>

⁸New York Office of Cannabis Management, <https://cannabis.ny.gov/about>

⁹ <https://cannabis.ny.gov/>

¹⁰ <https://cannabis.ny.gov/about>

¹¹ <https://cannabis.ny.gov/about>

¹² New York Cannabis Control Board, <https://cannabis.ny.gov/cannabis-control-board-meetings>

¹³ NY Governor News, Sep. 22, 2021, <https://www.governor.ny.gov/news/governor-hochul-announces-appointments-office-cannabis-management-board>

¹⁴ NY Governor News, Sep. 22, 2021, <https://www.governor.ny.gov/news/governor-hochul-announces-appointments-office-cannabis-management-board>

¹⁵ Reuben R. McDaniel, III was the former President and CEO of the Dormitory Authority for the State of New York (“DASNY”) and prior to joining DASNY in 2019, spent over 30 years in the financial services industry as an investment banker. <https://www.governor.ny.gov/news/governor-hochul-announces-appointments-office-cannabis-management-board>

¹⁶ Jessica Garcia was the Assistant to the President of the Retail, Wholesale Department Store Union (RWDSU), UFCW, a national labor union and previously served as Deputy Political Director for the RWDSU. Jessica spent her early career advocating for fair funding for public schools in New York City. <https://www.governor.ny.gov/news/governor-hochul-announces-appointments-office-cannabis-management-board>

¹⁷ Jen Metzger is a former State Senator.

¹⁸ Adam Perry, Esq., is a partner at the Buffalo law firm of Hodgson Russ, with expertise in advising clients in the cannabis and hemp industry.

¹⁹ Tremaine Wright is a former Democratic assemblywoman from Brooklyn.

²⁰ Jason Starr previously worked as the Director of the Long Island Chapter of the New York Civil Liberties Union and served as an Assistant Counsel for Civil Rights in the Executive Chamber where he lead various criminal justice initiatives. <https://cannabis.ny.gov/news/cannabis-control-board-holds-first-meeting>

²¹ NY CCB, <https://cannabis.ny.gov/news/cannabis-control-board-holds-first-meeting>

²² New York CCB, Meeting Agendas, <https://cannabis.ny.gov/cannabis-control-board-meetings>

²³ New York CCB, <https://cannabis.ny.gov/news/office-cannabis-management-completes-cannabis-conversations> (March 2022).

²⁴ The proposed Medical Cannabis Regulations expand the existing medical cannabis regulations. <https://cannabis.ny.gov/marihuana-regulation-and-taxation-act-mrta> (the public comment period for the proposed expanded medical cannabis regulations closed on Jan. 17, 2022).

²⁵ Cannabinoid Hemp Regulations, <https://cannabis.ny.gov/marihuana-regulation-and-taxation-act-mrta> (comments on the proposed amendments open until Mar. 7, 2022).

²⁶ New York State Office of the Governor, Governor Hochul Signs Conditional Cannabis Cultivation Bill, Feb. 22, 2022, available at <https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill>.

[governor-hochul-signs-conditional-cannabis-cultivation-bill](https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill).

²⁷ New York State Office of the Governor, Governor Hochul Signs Conditional Cannabis Cultivation Bill, Feb. 22, 2022, available at <https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill>.

²⁸ New York State Office of the Governor, Governor Hochul Signs Conditional Cannabis Cultivation Bill, Feb. 22, 2022, available at <https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill>.

²⁹ New York State Office of the Governor, Governor Hochul Signs Conditional Cannabis Cultivation Bill, Feb. 22, 2022, available at <https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill>.

³⁰ New York State Office of the Governor, Governor Hochul Signs Conditional Cannabis Cultivation Bill, Feb. 22, 2022, available at <https://www.governor.ny.gov/news/governor-hochul-signs-conditional-cannabis-cultivation-bill>.

³¹ MRTA, Article 6, Section 131-2.

³² NY OCM, Local Government Fact Sheet, Sep. 21, 2021, available at: <https://cannabis.ny.gov/system/files/documents/2021/09/cannabis-management-fact-sheet-9-21-local-government-06.pdf>.

³³ NY OCM, Local Government Fact Sheet, Sep. 21, 2021, available at: <https://cannabis.ny.gov/system/files/documents/2021/09/cannabis-management-fact-sheet-9-21-local-government-06.pdf>.

³⁴ MRTA, Article 6, Section 131-2.

³⁵ Section 104.3-3.N, Aurora, Illinois Zoning Regulations, <https://www.aurora-il.org/DocumentCenter/View/948/Zoning-Ordinance-as-of-O20-083> (hereinafter referred to as “Aurora, IL Zoning Code”). Section 7.5.4.3, Sheffield, Massachusetts Zoning Regulations. https://www.sheffieldma.gov/sites/g/files/vyhlf3806/f/uploads/bylaws_regulations_0.pdf (hereinafter referred to as “Sheffield, MA Zoning Code”). Section 11.803.1, Cambridge, Massachusetts Ordinance No. 1404 (amending the Zoning Ordinances of the City of Cambridge) (hereinafter referred to as “Cambridge Zoning Ordinance”), https://www.cambridgema.gov/-/media/Files/CDD/ZoningDevel/Amendments/Ordinances/zngamend_1404_cannabis.pdf. Section 162.024, Quincy, Illinois Zoning Regulations, https://code.library.amlegal.com/codes/quincy/latest/quincy_il/0-0-0-11021 (hereinafter referred to as “Quincy, IL Zoning Code”). Section 18-331.a.3 of the Thornton, CO Zoning Ordinance, https://library.municode.com/co/thornton/code/code_of_ordinances?nodeId=CO_CH18DECO_ARTIV_USUSRE_DIV10REPESEUS_S18-331MAST (hereinafter referred to as “Thornton, CO Zoning Code”).

³⁶ Sheffield, MA Zoning Code, Section 7.5.4.3; Thornton, CO Zoning Code, Section 18-331.a.3; Aurora, IL Zoning Code, Section 104.3-3.N.

³⁷Sheffield Zoning Code, Section 7.5.4.1; Thornton, CO Zoning Code, Section 18-331.b; Cambridge, MA Zoning Code, Section 11.803.1; Aurora, IL Zoning Code, Section 104.3-3.N.

³⁸Cambridge, MA Zoning Code, Section 11.803.1.b; Aurora, IL Zoning Code, Section 104.3-3.N.

³⁹Cambridge, MA Zoning Code, Section 11.803.1.

⁴⁰Sheffield, MA Zoning Code, Section 8.4.

⁴¹Chicago, Illinois, Cannabis Zoning Ordinance, Section 5, Section 17-7-0560, https://www.chicago.gov/content/dam/city/depts/zlup/supp_info/cannabis/cannabis_zoning_ordinance.pdf (hereinafter “Chicago, IL Zoning Code”). Thornton, CO Zoning Code, Section 18-331.b.

⁴²Sheffield, MA Zoning Code, Section 7.5.4.1; Thornton, CO Zoning Code, Section 18-331.c.; Great Barrington, MA Zoning Code, Sections 17.18.5 & 6.

⁴³Town of Great Barrington Zoning Regulations, Section 7.18.6. Sheffield Zoning Regulations. https://www.sheffieldma.gov/sites/g/files/vyhlif3806/f/uploads/bylaws_regulations_0.pdf. Aurora, Illinois Zoning Regulations, <https://www.aurora-il.org/DocumentCenter/View/948/Zoning-Ordinance-as-of-O20-083>. Thornton, CO Zoning Regulations, https://library.municode.com/co/thornton/codes/code_of_ordinances?nodeId=CO_CH42LIEBU_ARTXSMALI_DIV3LI_S42-717LIPRETMEMAT_EFA.

⁴⁴Sheffield Zoning Regulations. https://www.sheffieldma.gov/sites/g/files/vyhlif3806/f/uploads/bylaws_regulations_0.pdf. Springfield, IL Zoning Regulations, https://library.municode.com/il/springfield/codes/code_of_ordinances?nodeId=COORSPIL_TITXVLAUS_CH155ZO_ARTXVII.VPRDIMECA_S155.497SPREDIORADEDIOR.

⁴⁵MRTA Article 4, Section 85-12.

⁴⁶New York Department of State, Office of General Counsel, Legal Memorandum LU15, Can Local Boards Regulate the Hours of Operation of a Business?, August 22, 2021.

⁴⁷See *Home Depot, U.S.A. v. Town Bd. of Town of Hempstead*, 63 A.D.3d 938, 881 N.Y.S.2d 160 (2d Dep’t 2009) (A Town Board’s decision to impose site plan conditions restricting the hours that a Home Depot could operate and clean its parking area was held to be arbitrary and capricious, even though the time restrictions could effectively reduce traffic and noise during certain hours, absent findings or any expressed rationale supporting the imposition of the inconsistent hourly restrictions); *Old Country Burgers Co., Inc. v. Town Bd. of Town of Oyster Bay*, 160 A.D.2d 805, 553 N.Y.S.2d 843 (2d Dep’t 1990) (Town Board conditioned a Burger King approval on hours of use of the drive-through, citing traffic concerns. The court found this condition prohibiting operation of the drive through during peak meal hours was an “impermissible attempt to regulate the details of the operation of the [business],” because the condition was not based on substantial evidence). See also *St. Onge v. Donovan*, 71 N.Y.2d 507, 515-16, 527 N.Y.S.2d 721, 522 N.E.2d 1019

(1988). (The condition must be “reasonable, directly related to and incidental to the proposed use of the property and . . . aimed at minimizing the adverse impact that might result” from the approval.).

⁴⁸Great Barrington, Massachusetts, Zoning Regulations, Section 7.18.6, https://www.townofgb.org/sites/g/files/vyhlif636/f/uploads/zoning_bylaw_june_2021_0.pdf (hereinafter “Great Barrington, MA Zoning Code”); Cambridge, MA Zoning Code, Section 11.803.2; Sheffield, MA Zoning Code, Section 7.5.4.1.

⁴⁹MRTA, Article 4, Section 76.

⁵⁰Sheffield, MA Zoning Code, Section 7.5.4.2; Cambridge, MA Zoning Code, Section 11.803.2; Chicago, IL Zoning Code Section 6, Section 17-9-0100; Quincy, IL Zoning Code, Section 162.027;

⁵¹See Id.

⁵²Sheffield, MA Zoning Code Section 7.5.4.3.

⁵³Cambridge, MA Zoning Code, Section 11.803.3; Quincy, IL Zoning Code, Section 162-026; Springfield, Illinois Zoning Regulations, Section 155.497.a, https://library.municode.com/il/springfield/codes/code_of_ordinances?nodeId=COORSPIL_TITXVLAUS_CH155ZO_ARTXVII.VPRDIMECA_S155.497SPREDIORADEDIOR (hereinafter referred to as “Springfield, IL Zoning Code”); Thornton, CO Zoning Code Section 18-331.a.1; Aurora, IL Zoning Code, Section 104.3-3.N.

⁵⁴See Id.

⁵⁵Cambridge, MA Zoning Code, Section 6.36.5; North Hampton, Massachusetts Zoning Code, Section 350-8.1, <https://ecode360.com/11957611> (hereinafter referred to as “North Hampton, MA Zoning Code”); Springfield, IL Zoning Regulations, Section 155-497.

⁵⁶North Hampton, MA Zoning Code, Section 350-9.2(A).

⁵⁷Great Barrington, MA Zoning Code, Section 7.18.6; Sheffield, MA Zoning Code, Section 7.5.5; Cambridge, MA Zoning Code, Section 11.804; Thornton, CO City Code, Section 42-715; Aurora, IL Zoning Code, Section 104.3-3.N.

⁵⁸Cambridge, MA Zoning Code Section 11.805(d).

⁵⁹MRTA, Art. 4, Sec. 68.

⁶⁰MRTA, Art. 4, Sec. 76.

⁶¹MRTA, Art. 4, Sec. 76.

⁶²MRTA, Art. 4, Sec. 71.

⁶³MRTA, Art. 4, Sec. 72.

⁶⁴MRTA, Art. 4, Sec. 72.

⁶⁵MRTA, Art. 4, Sec. 77.

⁶⁶MRTA, Art. 4, Sec. 77.

⁶⁷MRTA, Art. 4, Sec. 74.

⁶⁸MRTA, Art. 4, Sec. 74.

⁶⁹MRTA, Art. 4, Sec. 75.

⁷⁰MRTA, Art. 4.

⁷¹MRTA, Art. 4, Sec. 70.

⁷²MRTA, Art. 4, Sec. 73.

⁷³MRTA, Art. 4, Sec. 87.

⁷⁴Gelsi, Steve, Marketwatch.com, New York State to Create \$200 Million Fund to Support Social Equity Cannabis Licensees, Jan. 6, 2022: <https://www.marketwatch.com/story/new-york-state-to-create-200-million-fund-to-support-social-equity-cannabis-licensees-2022-01-06>

⁷⁵MRTA, Art. 4, Sec. 76.

⁷⁶MRTA, Art. 4, Sec. 76.

⁷⁷MRTA, Art. 4, Sec. 64.

<https://legal.thomsonreuters.com/>