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New York Adult Use Marijuana: What You Need to Know

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Presentation Outline

During today's presentation we will discuss the following topics:

- An Overview of the Marijuana Regulation and Taxation Act
- The Licensing System for Recreational Marijuana Sales
- Municipal Opt-Out Authorization
- Should A Municipality Decide To Opt-Out
- Reasonable Local Restrictions on Retail Dispensaries and On-Site Consumption Sites
- Local Regulations Permitted on Personal Cultivation
- Non-smoking areas
- The Taxation System





An Overview of the MRTA



The Marijuana Regulation and Taxation Act (MRTA)

- Signed by Governor Cuomo on March 31, 2021.
- New York joins 15 states and Washington D.C. in legalizing recreational cannabis.
- The MRTA consolidates New York's adult use cannabis program with the State's existing medical marijuana program and cannabinoid hemp program.
- The consolidated programs will be under the control of the Cannabis Control Board and the Office of Cannabis Management.
- The MRTA establishes a licensing and taxation system for recreational marijuana sales.
- The MRTA creates social and economic programs to encourage individuals disproportionately impacted by cannabis enforcement to participate in the industry.
- The MRTA immediately legalized the personal possession of up to three ounces of cannabis for recreational purposes or 24 grams of concentrated forms of the drug, such as oils.



Cannabis Control Board (CCB)

- The CCB will oversee the Office of Cannabis Management.
- The CCB will be responsible for implementing and regulating New York's cannabis industry.
- The CCB will consist of 5 board members, 3 appointed by the Governor and 1 appointed by the Senate and 1 appointed by the Assembly. The chairman of the CCB will be nominated by the Governor with the advice and consent of the Senate. CCB members will be appointed for a term of three years and must be citizens and residents of New York.
- the CCB is tasked with creating New York's cannabis industry from scratch.



Powers of the CCB

- To limit the number of registrations, licenses, and permits for each class to be issued within New York or in any political subdivision (i.e. municipalities) in New York.
- To create the standards and requirements for the licenses for medical cannabis, adult-use cannabis and cannabis products, and cannabinoid hemp and hemp extract.
- To prescribe the form of applications for registrations, licenses, and permits and any reports deemed necessary by the CCB.
- To issue or refuse to issue any registration, license, or permit.
- To establish the minimum criteria for certifying employees to work in the cannabis industry in positions requiring advanced training.
- To establish any price quotas or price controls set by the executive director of the OCM.
- To approve the Office of Cannabis Management's social equity plan.
- To review the impact of licenses two years after the first retail sale to determine if any licensees have substantial market share that impairs social equity goals and to prevent dominant marketplace participation.
- To propose such rules, regulations and orders as it may deem necessary or proper to fully effectuate the provisions of the MRTA.



Office of Cannabis Management (OCM)

- OCM will be an independent office operating as part of the New York State Liquor Authority.
- The OCM is effectively responsible for the administration of New York's cannabis industry.
- The OCM will be led by an executive director, assisted by a chief equity officer and governed by the five-member CCB.



Powers of the OCM

- To keep of all registrations, licenses and permits issued and revoked within the state.
- To inspect or provide for the inspection of any premises where medical cannabis, adult-use cannabis, hemp cannabis are manufactured or sold.
- To inspect or provide for the inspection of any licensed or permitted premises where medical, adult-use or hemp is cultivated, processed, stored, distributed or sold.
- To enter into contracts, memoranda of understanding, and agreements to effectuate the policy and purpose of the MRTA.
- To advise and assist the CCB in carrying out any of its functions, powers and duties.
- To coordinate across state agencies and departments in order to research and study any changes in cannabis use and the impact that cannabis use and the regulated cannabis industry may have on access to 20 cannabis products, public health, and public safety.
- To issue guidance and industry advisories.



The Licensing System for Recreational Marijuana Sales



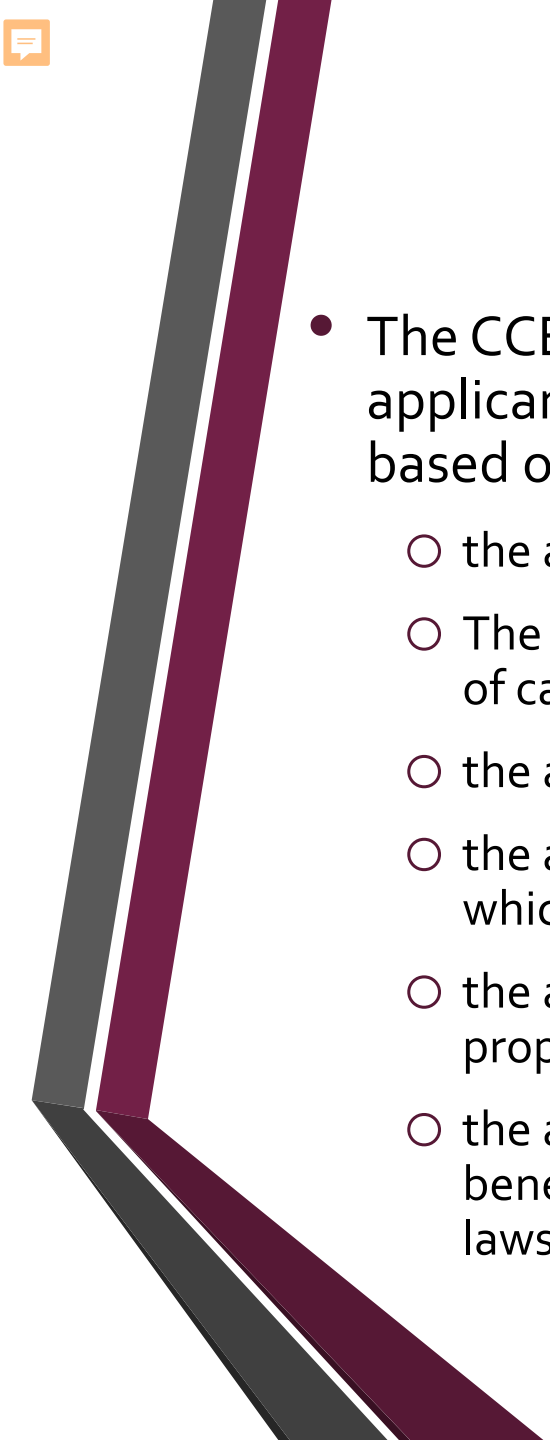
Adult-Use Cannabis Licenses

- The MRTA creates the following categories of licenses:
 - Adult-use cultivator license
 - Registered organization adult-use cultivator, processor, distributor, retail dispensary license.
 - Registered organization adult-use cultivator, processor and distributor license.
 - Adult-use processor license
 - Adult-use cooperative license
 - Adult-use distributor license
 - Adult-use retail dispensary license
 - Microbusiness license
 - Delivery license
 - Nursery License
 - Adult-use on-site consumption license



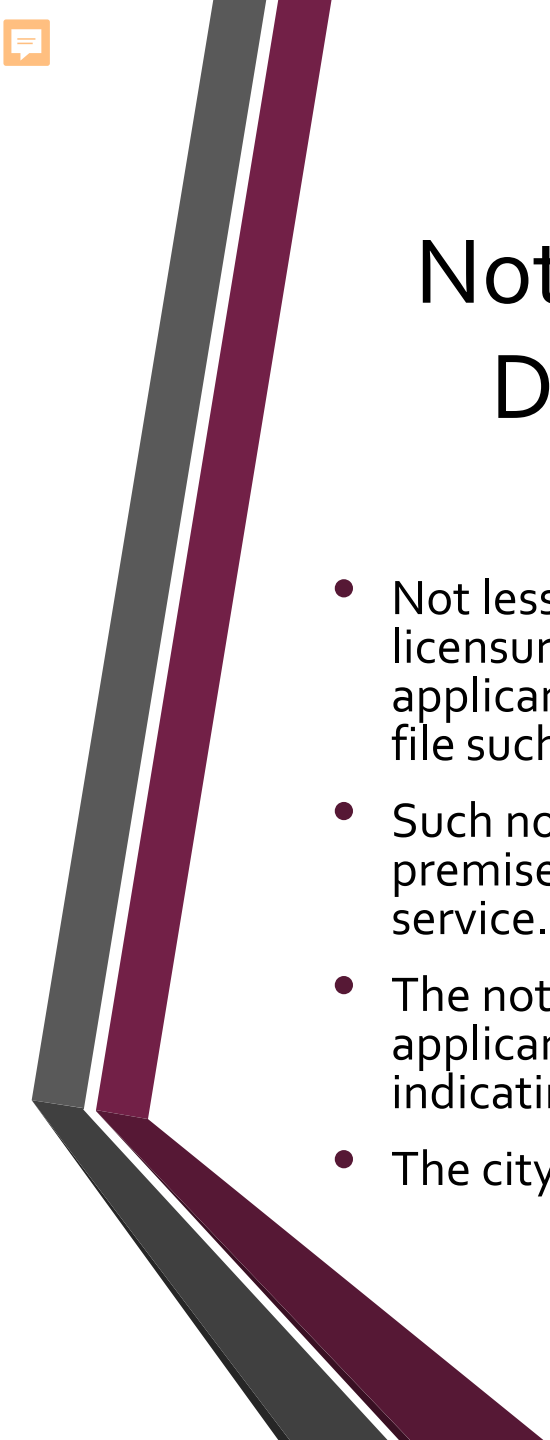
License Application

- Any person may apply to the CCB for a license to cultivate, process, distribute, deliver or dispense cannabis within NYS for sale.
- If the CCB approves the application, it shall issue a license.
- The license will contain a description of the licensed premises and shall be a license to the person specifically designated to cultivate, process, distribute, deliver or dispense cannabis in the licensed premises.
- A separate license is required for each facility at which cultivation, processing, distribution or retail dispensing is conducted.



Selection Criteria

- The CCB shall develop regulations for use by the OCM in determining whether an applicant should be granted the privilege of an initial adult-use cannabis license, based on, but not limited to, the following criteria:
 - the applicant is a social and economic equity applicant;
 - The applicant will be able to maintain effective control against the illegal diversion or inversion of cannabis;
 - the applicant will be able to comply with all applicable state laws and regulations;
 - the applicant and its officers are ready, willing, and able to properly carry on the activities for which a license is sought;
 - the applicant possesses or has the right to use sufficient land, buildings, and equipment to properly carry on the activity described in the; and
 - the applicant qualifies as a social and economic equity applicant or sets out a plan for benefiting communities and people disproportionately impacted by enforcement of cannabis laws.



Notification to Municipalities of Adult-use Retail Dispensary or On-site Consumption License.

- Not less than 30 days nor more than 270 days before filing an application with the state for licensure as an **adult-use retail dispensary** or an **on-site consumption establishment**, an applicant must notify the municipality where the premises are located of the applicant's intent to file such an application.
- Such notification must be made to the clerk of the city, town or village in which the designated premises are located by certified mail, return receipt requested, overnight delivery or personal service.
- The notice shall be on a standardized form and will include information such as the name of the applicant, trade name of the establishment, address of the establishment, and a statement indicating what the application is for (i.e. new establishment, transfer, renewal or alteration).
- The city, town or village shall have the option to submit an opinion in favor of or against a license.



OPT OUT



OPT IN

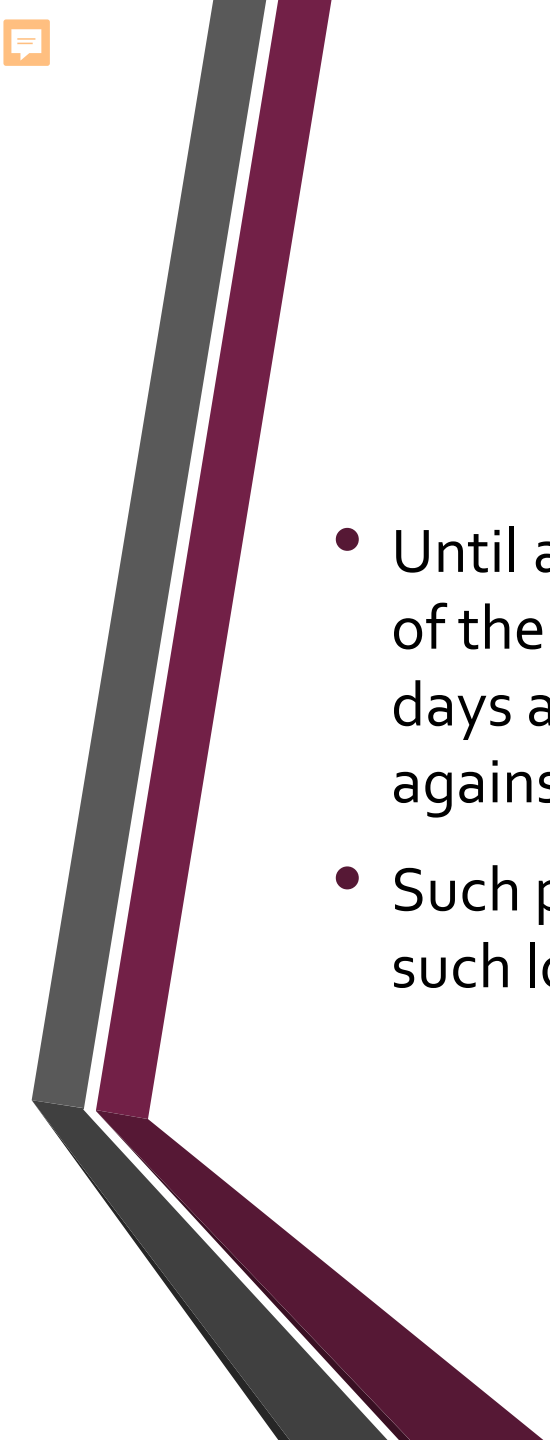


Municipal Opt-Out Authorization



Opt-Out Authorization

- The MRTA gives cities, towns and villages the ability to opt-out of allowing **adult-use dispensaries** and/or **adult-use social consumption sites** to operate within their boundaries.
- The licensure and establishment of a retail dispensary and/or on-site consumption operation (authorizing the retail sale of adult-use cannabis to consumers) shall not apply to a city, town or village that adopts a local law prohibiting the granting of such retail dispensary licenses and/or on-site consumption licenses within their respective jurisdictions.
- The right to opt-out does not apply to cultivation or processing of cannabis within a municipality's boundaries.
- An opt-out local law must be adopted by December 31, 2021 and is subject to a permissive referendum under Municipal Home Rule Law §24.
- Municipalities may not opt-out after December 31, 2021. However, a local law repealing such prohibition may be adopted at any time.
- If your municipality previously adopted a local law banning the retail sale of recreational marijuana, such local law is not valid. If the municipality would like to opt-out- it should adopt a new local law.



Permissive Referendum

- Until approved by an affirmative vote of a majority of the qualified electors of the local government voting on a proposition for its approval if within 45 days after the laws adoption a petition is filed with the clerk protecting against such local law.
- Such petition must be signed and authenticated by qualified electors of such local government.



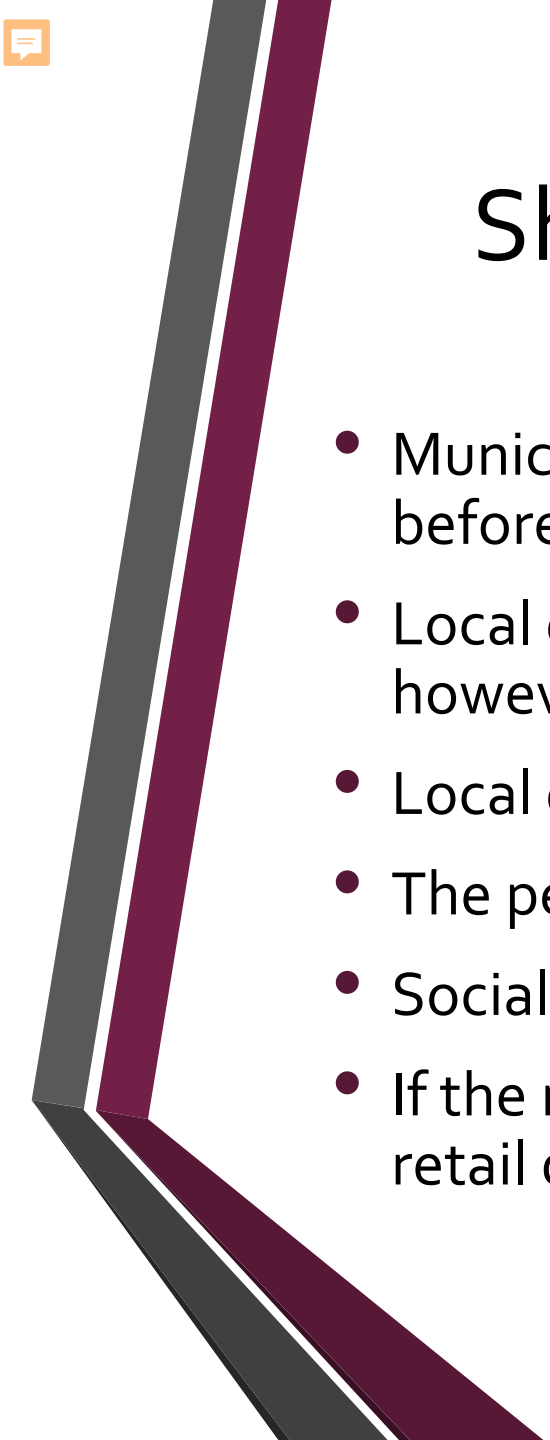
Permissive Referendum

No Petition Filed

- A local law in any county, city or town subject to a permissive referendum shall not take effect until at least 45 days after its adoption.
- A local law in any village subject to a permissive reference shall not take effect until at least 30 days after its adoption.

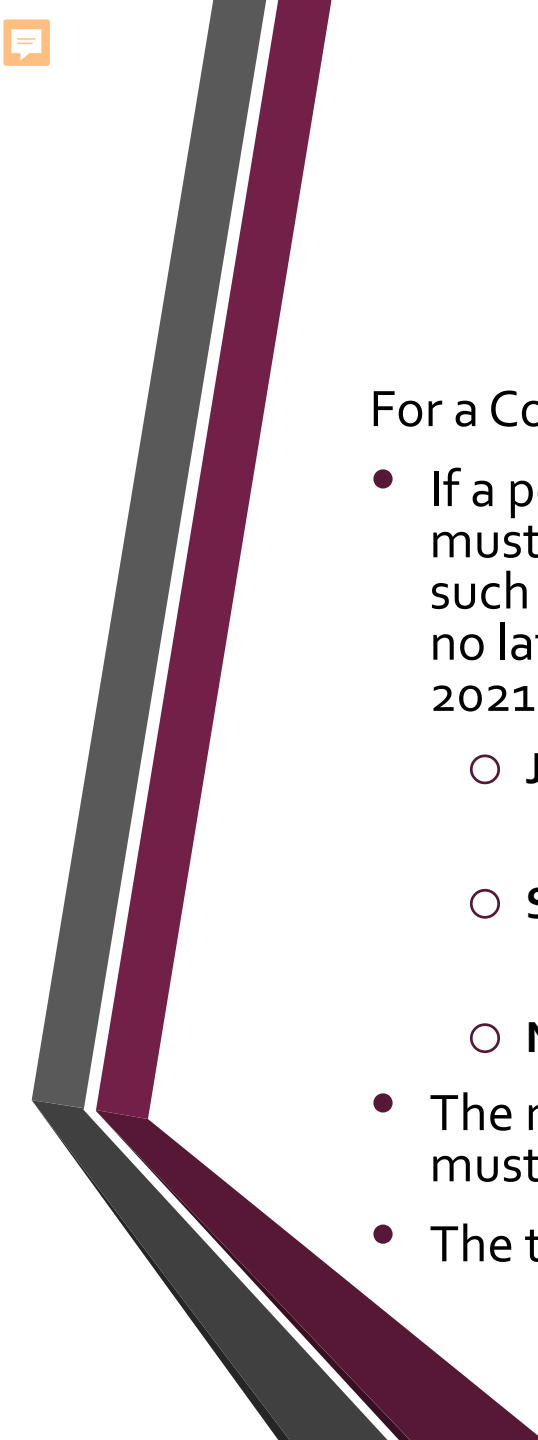
Petition is Filed

- Within 45 days or 30 days after the local law is adopted, a petition is filed with the clerk. In a county, city or town the petition must be signed and authenticated by qualified electors of such local government by a number equal to at least 10% of the total number of votes cast for Governor in the last gubernatorial election in such local government. In a village a petition must be signed by 25% of the electors in the Village, as shown on the register of electors for the previous general village election.
- If such petition is filed, a proposition for the approval of such local law shall be submitted at the next general election of state or local government officers held in such local government not less than sixty days after the filing of such petition, unless the petition request and the legislative body adopt a local law submitting such proposition at a special election held not less than sixty days after the adoption of the local law providing for such special election.



Should a Municipality Decide to Opt-Out

- Municipalities should carefully consider how to proceed on legal marijuana before banning it.
- Local governments can opt out of having retail dispensaries in their area; however, they will not receive tax revenue from it if they choose to do so.
- Local governments have until December 31 to pass a local law to opt-out.
- The people residing in the municipality should have a say in the matter.
- Social issues relating to authorizing retail dispensaries and smoking shops.
- If the municipality decides not to opt-out, they can still set some rules for retail dispensaries and on-site consumption facilities.



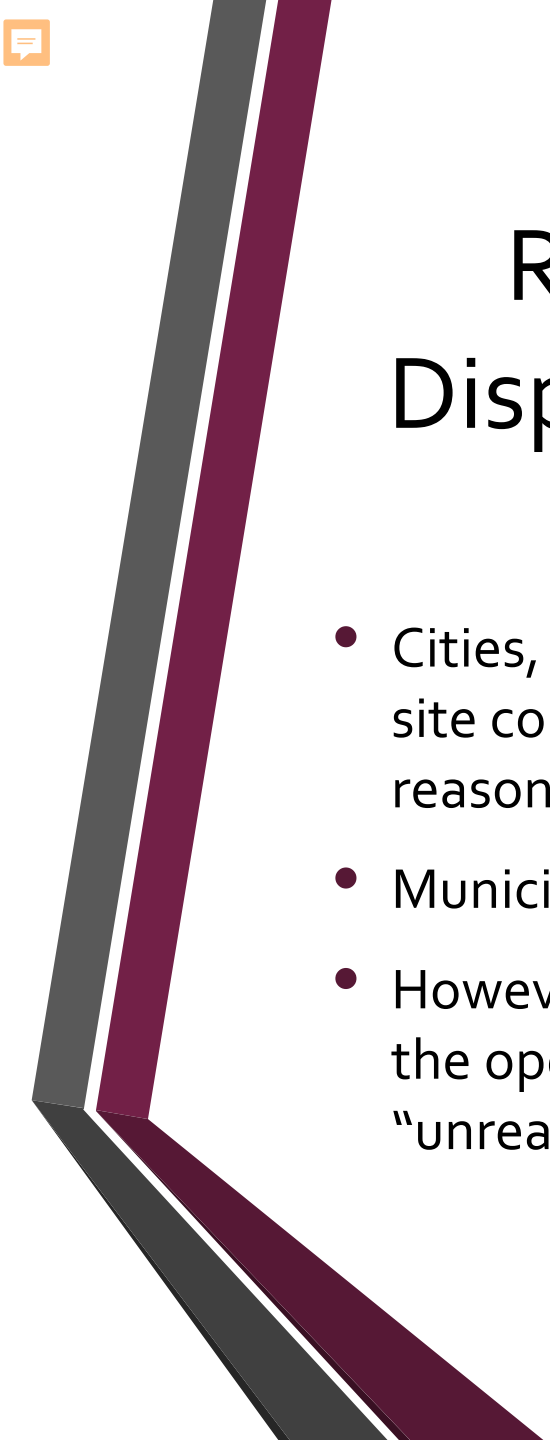
When Should A Municipality Decide to Opt-Out

For a County, City or Town:

- If a petition is filed by the voters, a proposition for the approval of the local Opt-Out law must be submitted at the next general election not less than sixty days after the filing of such petition. In order to be on the November 2, 2021 ballot, the local law must be adopted no later than July 19, 2021, and a petition must be filed no later than Thursday, September 2, 2021. In other words:
 - **July 19, 2021**- Last Day Municipality Can Adopt Local Law
 - 45 Days for Voters to File a Petition
 - **September 2, 2021**- Last Day for Voters to File a Petition
 - At least 60 days Must Pass Before the Proposition Can Appear on a Ballot
 - **November 2, 2021**- General Election. Proposition on Ballot.
- The municipality can also submit the proposition at a special election. The special election must be held sixty days after the adoption of the local law providing for such special election.
- The timeline is different for villages.

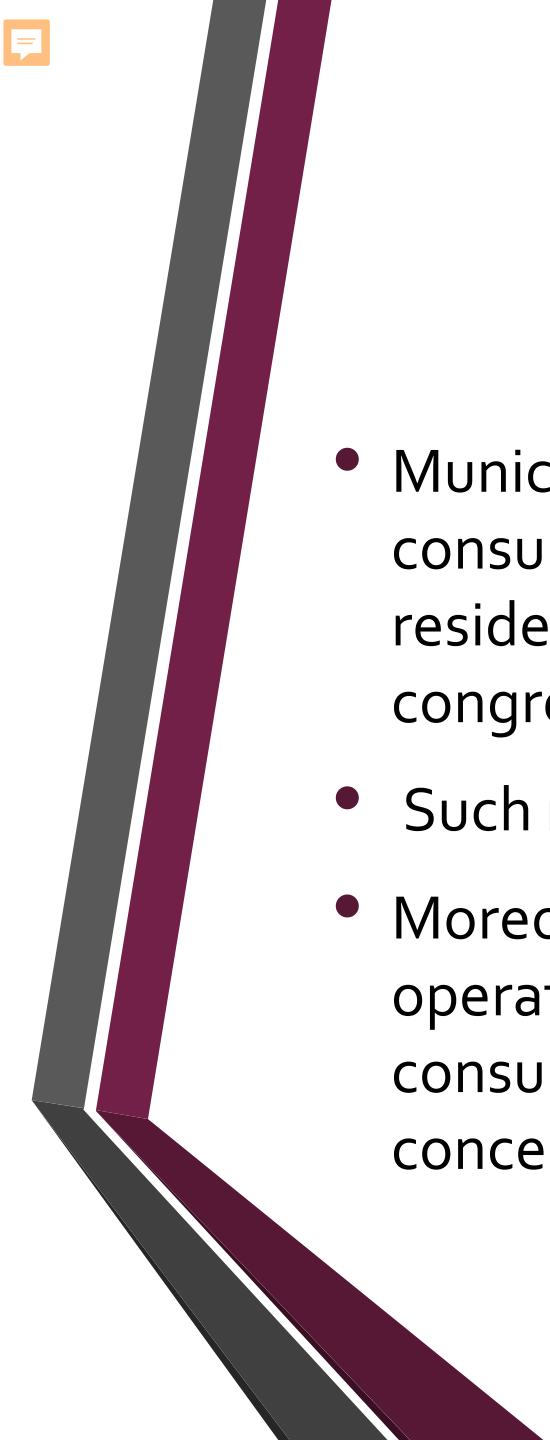


Reasonable Time, Place and Manner Regulations



Reasonable Local Restrictions on Retail Dispensaries and On-Site Consumption Sites

- Cities, towns and villages that do not-opt out of allowing retail dispensaries or on-site consumption sites within their boundaries may adopt local laws establishing reasonable time(s), place(s) and operational restrictions on these facilities.
- Municipalities may incorporate these local controls within their zoning codes.
- However, a municipality that does not opt-out cannot adopt regulations that make the operation of licensed retail dispensaries or on-site consumption sites “unreasonably impracticable” as determined by the CCB.



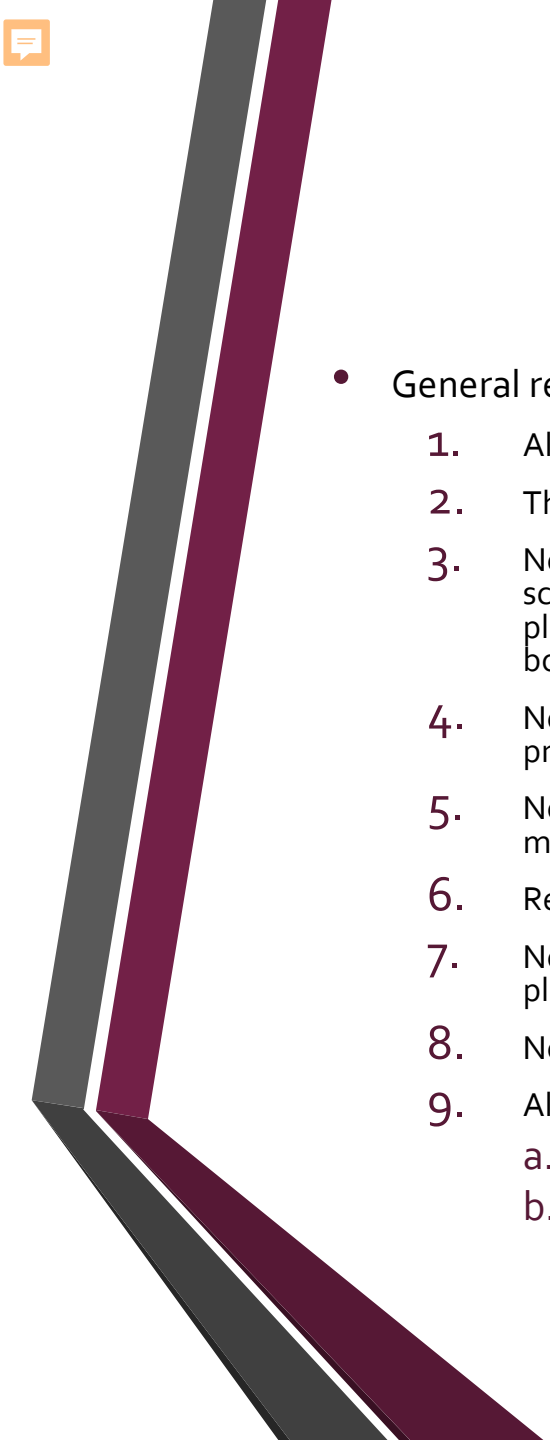
What is a Reasonable Restriction?

- Municipalities may, however, regulate retail dispensaries or on-site consumption establishments by specifying a particular distance from residentially zoned areas and facilities in which families and children congregate.
- Such restrictions may also include restrictions on the hours of operation.
- Moreover, zoning regulations may be used to prohibit such facilities from operating within a specified distance of another retail dispensary or on-site consumption establishment to avoid the impacts associated with the concentration of such uses in one place.



Town of Lynnfield, MA

- Location. A registered marijuana dispensary may be located only within the Commercial District by special permit from the Planning Board. A separate special permit shall be required for each premises from which a registered marijuana dispensary is operated. No two or more different registered marijuana dispensaries may be treated as one premises nor may they be co-located on a single premises.
 1. A registered marijuana dispensary shall not be located within 1,000 yards of any school, church, licensed child care center, playground, place of worship, or any other registered marijuana dispensary.
 2. No registered marijuana dispensary shall be located within the same premises as any medical doctor's office or the offices of any other professional practitioner authorized to prescribe the use of medical marijuana.
 3. Any and all cultivation, production, storage, display, sales, or other distribution of marijuana shall be located so as to occur only within the restricted area of a registered marijuana dispensary and shall not be visible from the exterior of the business.
- Signs. Any and all signs related to the registered marijuana dispensary must be located on the same building in which the registered marijuana dispensary is located and must comply with all sign regulations of the Town of Lynnfield. No sign, advertisement, display, or other promotional material which utilizes graphics related to marijuana or marijuana paraphernalia, or figures or symbols related to marijuana shall be visible to the public from any public way, including, but not limited to, sidewalks, pedestrian walkways, or highways.



Town of Marshfield, MA

- General requirements for recreational marijuana retailer.
 1. All recreational marijuana retailers shall be contained within a secure building or structure.
 2. The hours of operation of the recreational marijuana retailer shall be set by the Zoning Board of Appeals.
 3. No recreational marijuana retailer shall be located within 500 feet of a property boundary line of any lot in use as a private or public school, college, licensed day-care facility, library, park, playground, recreational or athletic fields or the Boy's and Girl's Club or similar place where children typically congregate. The distance shall be measured in a straight line from property boundary line to property boundary line.
 4. No smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises.
 5. No recreational marijuana retailer shall be located inside a building containing residential units, including transient housing such as motels and dormitories, or inside a movable or mobile structure such as a car, van, truck, trailer cargo container.
 6. Recreational marijuana retailers shall not have drive-through service.
 7. No signage shall be permitted that contains designs or symbols that depict or display in any way marijuana products, equipment or plants, or other similar materials.
 8. No outside displays or storage of marijuana, related supplies or promotional materials are allowed.
 9. All recreational marijuana retailers shall be ventilated in such a manner that no:
 - a. Pesticides, insecticides, or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere.
 - b. Odor from marijuana can be detected by a person with a normal sense of smell at the exterior of the building.

Town of Bolton, MA

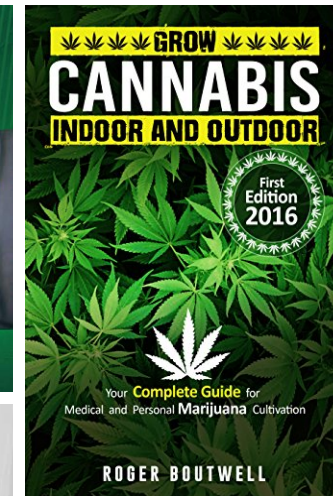
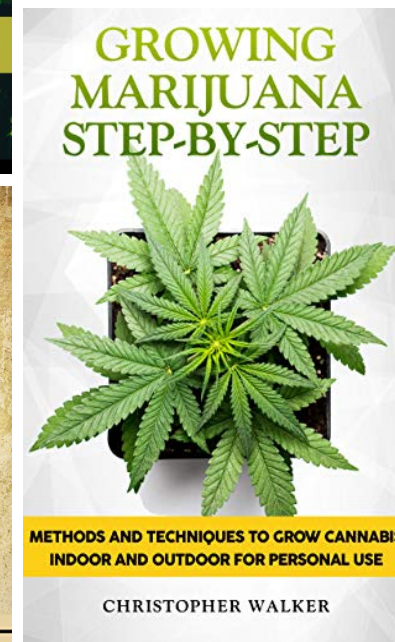
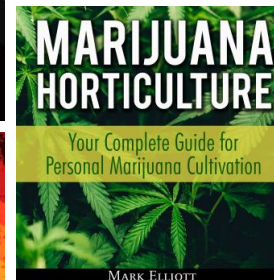
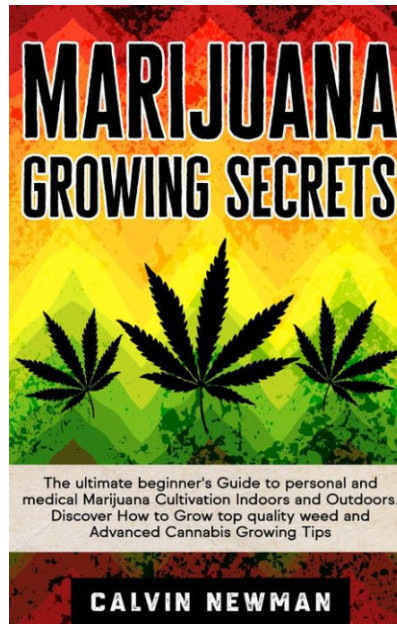
- General requirements and conditions for all marijuana establishments.
 1. Marijuana establishments shall comply with all aspects of MGL c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed, and 935 CMR 500.000, Adult Use of Marijuana.
 2. All aspects of the marijuana establishment relative to the acquisition, cultivation, possession, processing, sales, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies or educational materials shall take place at a fixed location within a fully enclosed building or structure and shall not be visible from the exterior of the business.
 3. No outside storage is permitted. This prohibition applies to all aspects of the product and waste associated with the marijuana establishment.
 4. All marijuana establishments shall be ventilated in such a manner that no:
 - a. Pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere or ground.
 - b. Odor from marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana establishment or at any adjoining use or property.
 5. Signage shall conform to § [250-18](#), Sign regulations, of Bolton's Zoning Bylaw and requirements of state laws and regulations governing such facilities, including 935 CMR 500.105(4).
 6. A marijuana establishment's water supply shall be sufficient for necessary operations. Any private water source shall be capable of providing a safe, potable, and adequate supply of water to meet the marijuana establishment's needs.
 7. The hours of operation of a marijuana retailer shall be limited to Monday through Saturday from 10:00 a.m. to 9:00 p.m. and Sunday from 12:00 p.m. to 6:00 p.m.; or as otherwise established by the SPGA.
 8. No smoking, burning, or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises of a marijuana establishment.
 9. No marijuana retailer shall have a gross floor area in excess of 2,500 square feet.
 10. No marijuana establishment shall be located within a radius of 500 feet of a residential dwelling. The five-hundred-foot distance shall be measured in a straight line from the nearest point of the residence in question to the nearest point of the proposed marijuana establishment established at the time the proposed marijuana establishment's application is received by the SPGA.
 11. No marijuana establishment shall be located within a radius of 500 feet of a public or private school, day-care center, or any facility where children commonly congregate. The five-hundred-foot distance shall be measured in a straight line from the nearest point of the residence or facility in question to the nearest point of the proposed marijuana establishment established at the time the proposed marijuana establishment's application is received by the SPGA.
 12. All structures associated with marijuana establishments shall be set back from front, side and rear property lines in accordance with Bolton's Zoning Bylaw under § [250-13B](#), Dimensional regulations.
 13. Marijuana establishments shall provide the Bolton Police Department, Fire Department, Building Inspector and the SPGA with the names, phone numbers and e-mail addresses of all management staff and key holders who can be contacted if there are operating problems associated with the marijuana establishment.



City of Denver, CO

- It shall be unlawful for any person to emit air contaminants that constitute a nuisance.
- *Nuisance:* The doing of or the failure to do something that allows or permits air contaminants to escape into the open air that are or tend to be detrimental to the health, comfort, safety or welfare of the public or that causes or tends to cause injury or substantial annoyance or inconvenience to persons exposed thereto or causes or tends to cause damage to property.
- If any person engages in marijuana growing, processing or manufacturing an odor control plan must be submitted to the Manager of the Department of Public Health and Environment of the City to prevent and control nuisance odors originating or anticipated to originate at the premises and the control technologies to be used to prevent such odors from leaving the premises.
- It shall be an affirmative defense to a nuisance violation that a person is in compliance with a submitted odor control plan.

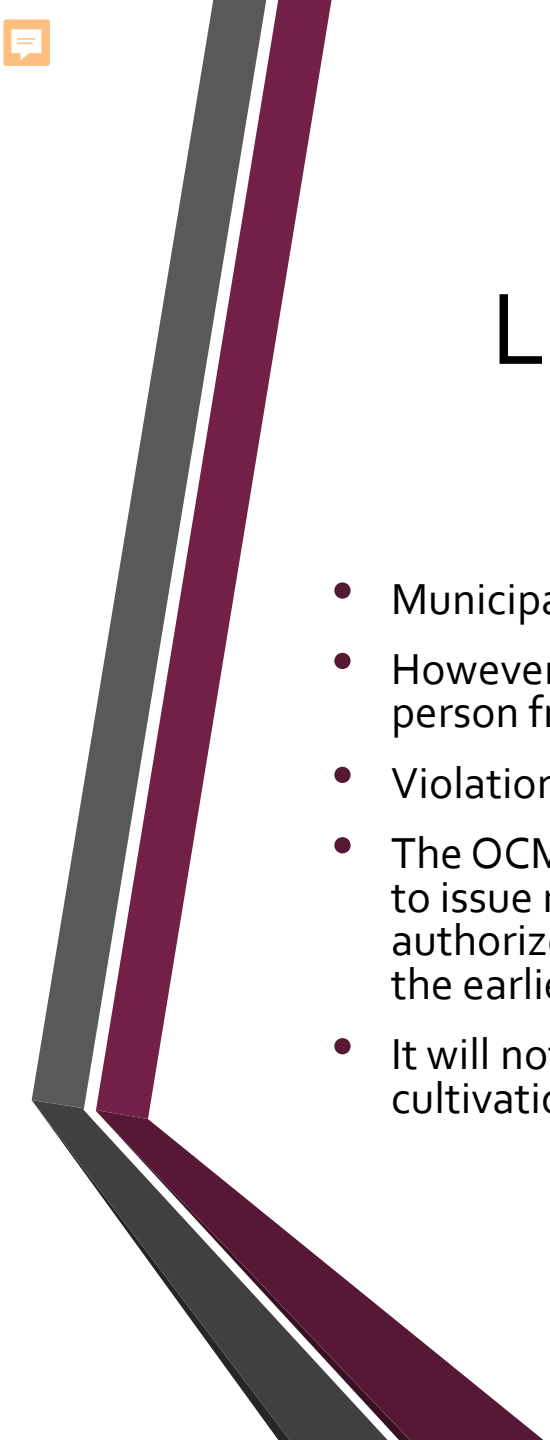
Personal Cultivation





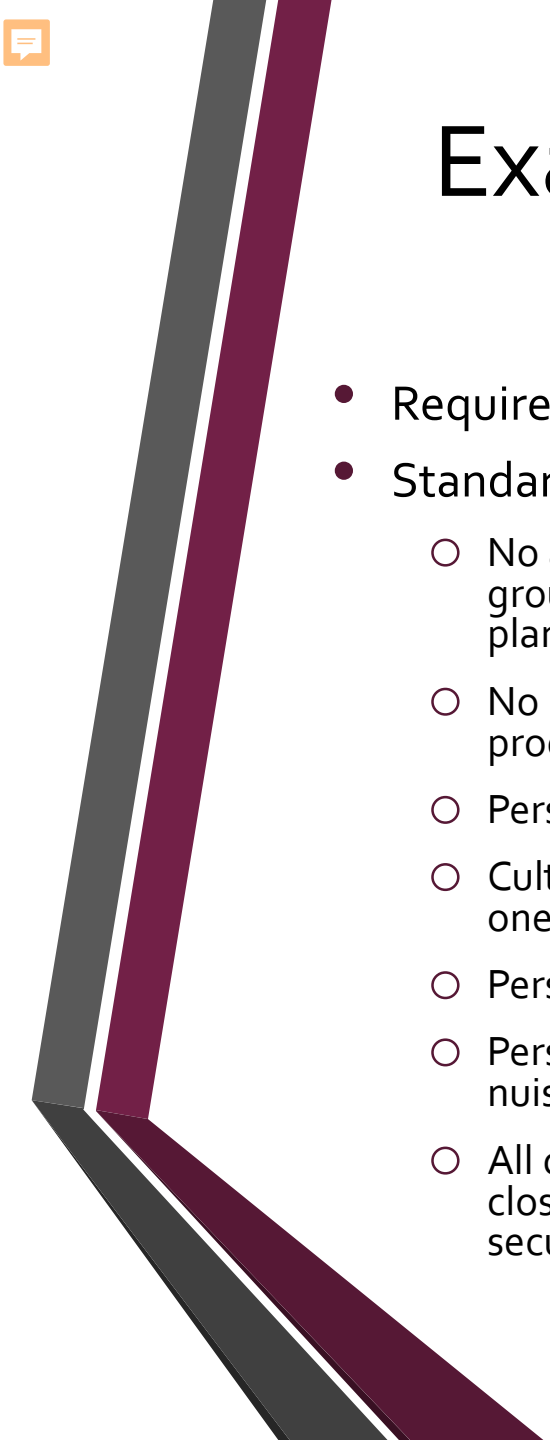
Personal Cultivation

- The MRTA allows the cultivation of cannabis for personal use and limits the number of plants that may be grown.
- No more than six (6) mature and six (6) immature cannabis plants may be cultivated, harvested, dried or possessed within any private residence or on the grounds of a person's private residence.
- The personal cultivation of cannabis is only permitted within, or on the grounds of, a person's private residence.
- Such person must take reasonable steps designed to ensure that such cannabis is in a secured place not accessible to any person under the age of 21.



Local Regulation of Personal Cultivation

- Municipalities may enact laws to reasonably regulate the actions and conduct of personal cultivation.
- However, no county, town, city or village may enact or enforce any regulation that essentially prohibits a person from engaging in personal cultivation.
- Violations of the personal cultivation restrictions are limited to a civil penalty of up to \$200.00.
- The OCM will issue regulations and guidance for home cultivation of cannabis. The MRTA requires the OCM to issue regulations for adult-use home cultivation not later than eighteen months following the first authorized retail sale of adult-use cannabis products to a cannabis consumer. (That means not until 2023 at the earliest).
- It will not be legal to grow cannabis in your home until the OCM has issued regulations governing the home cultivation of cannabis.



Examples of Local Regulations Concerning Personal Cultivation

- Require residents to register with the municipality.
- Standards to consider for personal cultivation and home possession of cannabis:
 - No applicant shall plant, cultivate, harvest, dry, process or possess, within his or her private residence, or on the grounds of his or her private residence more than three mature cannabis plants and three immature cannabis plants at any one time.
 - No more than six mature and six immature cannabis plants may be planted, cultivated, harvested, dried, processed or possessed within any private residence, or on the grounds of a person's private residence.
 - Personal cultivation of cannabis shall only be permitted within, or on the grounds of, a person's private residence.
 - Cultivated cannabis shall be stored in a secure place that is not accessible to any person under the age of twenty-one.
 - Personal cultivation shall be prohibited in any front yard. No cannabis plant shall be stored in any front yard.
 - Personal cultivation shall not be permitted to produce or emit beyond the boundaries of the property any nuisance, including but not limited to, noise, odor, radiation, light, or heat.
 - All cannabis plants maintained on the property shall be enclosed by protective fencing and a gate which shall be closed and locked, or shall be kept in a securely locked room, cabinet, shed, greenhouse or other structure or secure box.

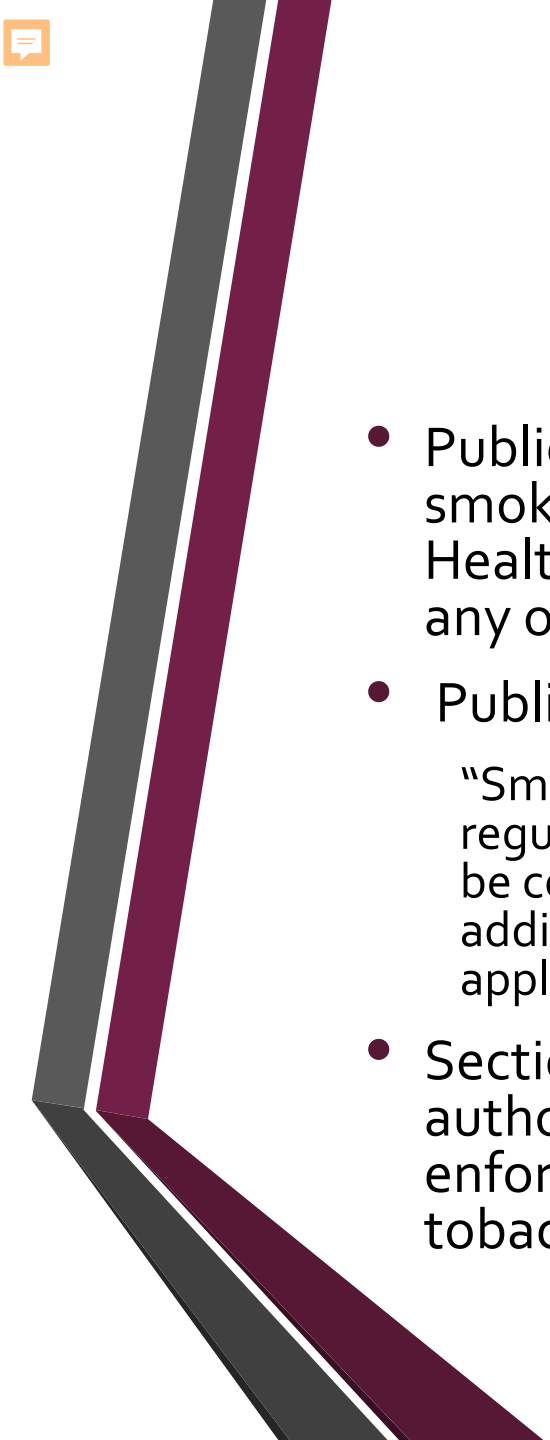


**NO TOBACCO OR
MARIJUANA SMOKING
AT ANY TIME**



Smoking Cannabis

- Adults 21 and older can generally smoke cannabis anywhere it is currently legal to use tobacco.
- Smoking cannabis is prohibited in schools, workplaces, and in cars.
- Municipalities can also adopt regulations to allow the smoking of cannabis in locations where smoking tobacco is prohibited.



Smoking Regulations in New York

- Public Health Law Section 1399-P. The Public Health Law is clear that anywhere smoking tobacco is prohibited, smoking cannabis is also prohibited. The Public Health Law defines smoking as “the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco **or cannabis**.”
- Public Health Law Section 1399-R states that:

“Smoking and vaping may not be permitted where prohibited by any other law, rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.”
- Section 2 of the MRTA states that nothing in the MRTA is intended to limit the authority of any district, government, agency or office or employee to enact and enforce policies to “allow smoking cannabis in any location where smoking tobacco is prohibited.”



Where is it Illegal to Smoke? Indoor Locations

- places of employment (including Village Hall);
- bars;
- food service establishments, except as provided in subdivision six of section thirteen hundred ninety-nine-q of this article;
- enclosed indoor areas open to the public containing a swimming pool;
- public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines;
- ticketing, boarding and waiting areas in public transportation terminals;
- youth centers and facilities for detention;
- any facility that provides childcare services;
- child day care centers;
- group homes for children;
- public institutions for children;
- residential treatment facilities for children and youth;
- all public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities and other educational and vocational institutions;
- general hospitals and residential health care facilities
- commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;
- indoor arenas;
- zoos; and
- bingo facilities.

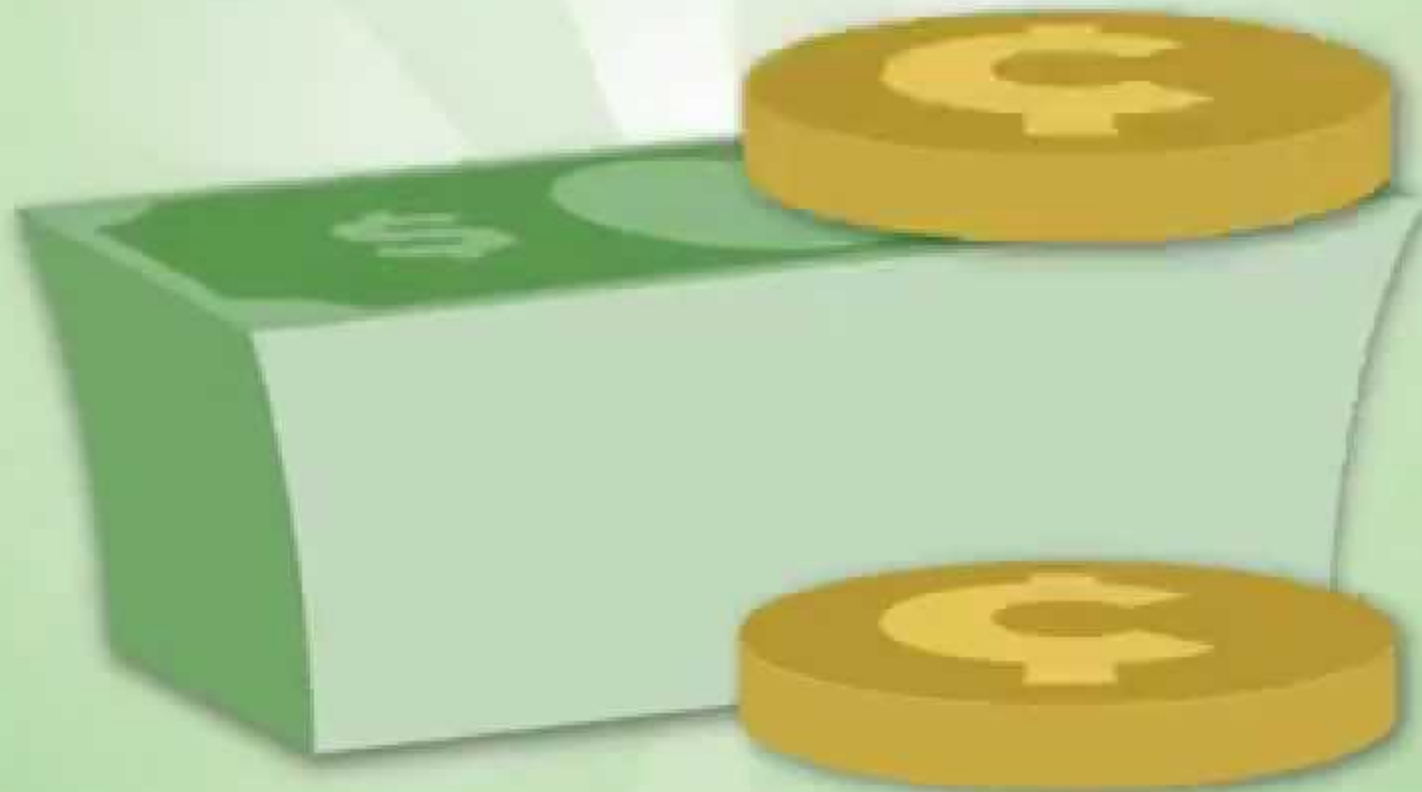


Where is it Illegal to Smoke?

Outdoor Locations

- ticketing, boarding or platform areas of railroad stations operated by the metropolitan transportation authority or its subsidiaries.
- on the grounds of general hospitals and residential health care facilities as defined in article twenty-eight of this chapter, within fifteen feet of a building entrance or exit or within fifteen feet of the entrance to or exit from the grounds of any such general hospital or residential health care facility.
- within one hundred feet of the entrances, exits or outdoor areas of any public or private elementary or secondary schools.
- within one hundred feet of the entrances, exits or outdoor areas of any after-school program licensed or registered pursuant to section three hundred ninety of the social services law.
- within one hundred feet of the entrances, exits or outdoor areas of any public or association library.
- at a playground during the hours between sunrise and sunset, when one or more persons under the age of twelve are present.

Taxation





Local Financial Benefits

- Cannabis products will be subject to a 13% sales tax in New York, 9% of which will be directed to state coffers and 4% to localities.
- The 4% cannabis excise tax for local government purposes would be imposed on the retail sale of adult-use cannabis products from retail dispensaries to consumers.
- The revenue from the tax will be distributed quarterly to each county.
- Counties will receive 25% of the local retail tax revenue and 75% of the revenue would be distributed quarterly by the counties to the cities, towns and villages within such county in which a retail dispensary is located.
- The revenue will be distributed in proportion to the sales of adult-use cannabis products by the retail dispensaries in such municipalities as reported by a seed-to-sale system.
- Where a retail dispensary is located in a village within a town that also permits cannabis retail sales, 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 county must distribute money no later than 30 days after receiving it from the State Comptroller.



Open Questions

If a municipality chooses to not opt-out, can the municipality still refuse to issue a building permit to a retail dispensary because recreational marijuana is federally illegal? Municipalities have a duty to uphold both federal and state law.

Can municipalities use their zoning codes to regulate commercial cultivating and processing facilities?

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Thank you! Questions ?

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