

**TOWN BOARD  
SPECIAL MEETING**

**MONDAY**

**AUGUST 9, 2021**

*Attire: Business Casual*

**Supervisor Zupan opened the meeting at 6:30 p.m. with four Councilors present. Councilor Race was delayed in arriving, but joined at 7:02 p.m.**

**Roll call:**

<b>Councilor Andersen</b>	<b>Present</b>
<b>Councilor Race</b>	<b>Excused</b>
<b>Councilor Golub</b>	<b>Present</b>
<b>Councilor Reger</b>	<b>Present</b>
<b>Supervisor Zupan</b>	<b>Present</b>

**Supervisor Zupan stated proper notification of this meeting took place and further a quorum was present for the purposes of this meeting.**

*Stacy Marris, Esq., an Attorney with Costello, Cooney & Fearon, PLLC was the presenter who reviewed with the Town Board the newly passed legislation, Marijuana Regulation and Taxation Act (MRTA) legalizing adult-use cannabis in New York. John Langey, Attorney for the Town, was present, as well.*

*A Powerpoint presentation was displayed for all in attendance to see. Ms. Marris reviewed the following slides with the Town Board. Please note - a few slides have notations in red in which further details were presented.*

\*\*\*\*\*



# New York State's Marijuana Regulation & Taxation Act

Town of Cazenovia | August 9, 2021

## COSTELLO

COONEY & FEARON

Experience Innovation

---

**John R. Langey**

**Stacy A. Marris**

211 West Jefferson Street

Syracuse, New York 13202

(315) 422-1152

# Overview

---

The MRTA was signed into law on March 31, 2021.  
It ends a near 100-year prohibition on cannabis in the State.

It creates the Cannabis Law, an entirely new system of laws under the New York Laws, and amends many other existing laws (e.g., Penal Law, Public Health Law, Tax Law, Labor Law).

Some portions of the law went into effect immediately, while other portions will be phased in.  
*For example, the actual commercial sale of cannabis is not expected until at least 2022.*

# Cannabis 101

---

**THC:** technically, Delta-9/8/10-tetrahydrocannabinol compounds found in a cannabis plant (it's what gets you high)

**Cannabis:** the entire cannabis plant with a THC level above .03% (it does not include hemp, cannabinoid hemp or hemp extract)

**Cannabis flower:** flower of the cannabis plant that has been harvested, dried and cured, prior to any processing (into concentrate, an edible or topical product, etc.) (quintessentially, "weed")

**Cannabis trim:** all parts of the cannabis plant other than the flower that have been harvested, dried, cured, but prior to any processing

**Concentrated cannabis:** the separated resin from cannabis or a material which contains more than .03% of THC – can be in the form of liquid, wax or powder/solid (think vapes or hash)

**Hemp:** Cannabis sativa L. plant with no more than .03% of THC

**Hemp extract:** derivatives from hemp, whether used for human consumption or not

**Cannabinoid:** phytocannabinoids found in hemp (does not include synthetic cannabinoids) (think cannabidiol, or CBD)

**Cannabinoid hemp:** any product processed or derived from hemp (no more than .03% THC) for its cannabinoid content

**Edible:** food product that contains cannabis

# The Office of Cannabis Management

---

## **Office of Cannabis Management**

- independent office operating as part of the State Liquor Authority

## **Cannabis Control Board**

- governs the Office of Cannabis Management
  - consists of five members

## **Cannabis Advisory Board**

- makes policy recommendations and reports on the state of the cannabis program
- responsible for approving the spending by the Community Grants Reinvestment Fund
  - consists of 13 members

# Adult-Use Cannabis

---

- Adults 21+ can now possess, use, transfer (without compensation), etc., up to three ounces of cannabis and up to 24 grams of concentrated cannabis.
- Adults 21+ may plant, cultivate, harvest, process, etc., cannabis personally, subject to restrictions.
- It is now prohibited to discriminate against individuals for engaging in conduct permitted under the Cannabis Law.
- Cannabis may be sold to anyone 21+, but not who is visibly intoxicated (or to anyone whom retailers know or reasonably believe is acquiring the cannabis for the purpose of selling or illegally giving it away).

*In essence, cannabis will be regulated similarly to tobacco (and sometimes alcohol), including with similar consumer safety regulations.*

*S. Marris quantified three ounces for the Town Board which equals 150-200 joints.*



# Adult-Use Cannabis

## Public Consumption

*The smoking/vaping of cannabis is prohibited  
anywhere the smoking/vaping of tobacco is limited.*

- Cannabis has been added to the Clean Air Act, which is only a *baseline* for where cannabis can be smoked/vaped.
- **Local governments are not preempted from imposing their own local indoor smoking and vaping restrictions that are more stringent.**
- **Local governments may even impose their own smoking and vaping restrictions for property owned or controlled by the municipality, including parks and playgrounds.**

*Violations of such restrictions are subject to a civil penalty not exceeding \$25 or an amount of community service not exceeding 20 hours.*

- Additionally, cannabis cannot be smoked or vaped on school grounds, within 100 feet of entrances/exits/outdoor areas of schools or public libraries or in/on school buses.



# Adult-Use Cannabis

## Personal Cultivation and Home Possession

**Local municipalities, including counties, may enact and enforce certain regulations relating to home cultivation and possession, provided no municipality may completely ban or prohibit either.**

*Civil penalties may constitute no more than an infraction and can be no more than \$200.*

- Those 21+ may plant, cultivate, process and possess up to three mature and three immature plants (capped at six of each per household). Home-cultivated cannabis cannot be sold to anyone and is only intended for personal use.
- Those 21+ may possess up to five pounds of cannabis in or on the grounds of their private residence.
- *A violation (excluding violations of regulations set forth by local governments), is subject to a civil penalty of up to \$125.*

*Personal cultivation of cannabis is **prohibited** until the Office of Cannabis Management issues regulations for it.*

Such regulations must be issued no later than September 30, 2021, for medical cannabis users and no later than 18 months following the first authorized retail sale of cannabis for adult-use cannabis consumers.



# Medical Cannabis

---

The State Medical Marijuana Program is now housed in Article 3 of the Cannabis Law.

- It allows people with a larger list of medical conditions to access medical cannabis.
- It increases the number of caregivers allowed per patient.
- It permits home cultivation of medical cannabis for patients.

# Licensing

---

The MRTA creates a two-tier licensing structure focused on preventing growers and processors from also owning retail stores.

A large part of the cannabis program is to foster social equity and assist minority-owned businesses, distressed farmers and service-disabled veterans. The State is required to have a goal of awarding 50% of licenses to such groups and to help communities disproportionately impacted by the enforcement of cannabis prohibition.

Licensing will be required for:

- cultivating cannabis;
- processing cannabis;
- distributing cannabis;
- delivering cannabis;
- dispensing cannabis;
- operating a cooperative;
- operating a microbusiness;
- operating a nursery; and
- operating an on-site consumption establishment.

Licenses will expire two years after the date of issue and are subject to renewal. Licenses are also subject to civil penalties, suspension and revocation.



# Licensing

## Notification to Local Governments of License Applications

**Cultivators, processors, distributors, retail dispensaries and on-site consumption license applicants must notify the municipality in which the applicant's premises is located of their intent to file an application for the location.**

- The notice must be filed with the municipal clerk not less than 30 days nor more than 270 days before filing the license application with the State.
- The notification must be submitted via certified mail, return receipt requested; overnight delivery service with proof of mailing; or personal service.
- The notification must be made in the form (not yet) prescribed by the Cannabis Control Board.
- The notification will include identifying information (e.g., name, addresses, telephone numbers) and a statement indicating what the application is for, in addition to other license-specific information.



# Licensing

## Notification to Local Governments of License Applications

**Upon such notification, the local government may issue an opinion to the Office of Cannabis Management for or against the granting of the application.**

The opinion will be deemed part of the record upon which the Office makes its licensure recommendation to the Cannabis Control Board to grant or deny the application.

The Cannabis Control Board must respond in writing to the municipality with an explanation of how such opinion was considered in granting or denying the application.



# Licensing

## Selection Criteria

Aspects of the selection criteria set forth in the Cannabis Law are pertinent to municipalities.

The Cannabis Control Board can determine selection criteria for applicants, but the Cannabis Law provides a baseline. Such considerations include:

- the number, classes and character of other licenses in proximity to the location in the municipality;
- whether there is a demonstrated need for spaces to consume cannabis;
- any effect on pedestrian or vehicle traffic and parking;
- potential noise impact generated by the proposed premises;
- any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage, and the public interest of the community.

The Cannabis Law separates licensing criteria for on-site consumption establishments from other licenses (though the criteria is essentially the same), demonstrating the State's intention to be particular and deliberate about the establishment of on-site consumption facilities.

# Taxes & State-Funded Programming

---

New Tax Law Article 20-C, “Adult-Use Cannabis Products,” imposes taxes on the distribution and retail sale of adult-use cannabis (*not medical cannabis*) and establishes several funds to finance the social equity and public health programs outlined in the MRTA.

At the distribution-level, cannabis will be taxed per milligram of THC, with different rates depending on the final product type (e.g., edibles, concentrates, flower).

**At the retail sale-level, the MRTA establishes a 13% excise tax on cannabis, with 9% going to the State (the Cannabis Revenue Fund) and 4% to the local county and municipality.**

The State tax revenue will go to the Cannabis Revenue Fund and will be used to fund the operation of the cannabis program. The remaining funding will be split 40% to education; 40% to the Community Grants Reinvestment Fund; and 20% to the Drug Treatment and Public Education Fund.



# Taxes

## Local Revenue from Cannabis Sales

*There are no restrictions on how local governments may use local revenues from the 4% local tax on retail sale of adult-use cannabis.*

However, if a city, village or town has opted out of allowing retail cannabis dispensaries and/or on-site cannabis consumption establishments to locate within their boundaries, that municipality **WILL NOT** receive any revenue from the local cannabis sales tax.



# Taxes

## Local Revenue from Cannabis Sales

The State Comptroller will distribute taxes collected to counties in which adult-use cannabis retail sales occur:

- Counties are entitled to retain 25% of the money distributed by the Comptroller;
- The counties must distribute the remaining 75% of the money to cities, towns and villages within the county in proportion to the sales made in such cities, towns and villages.
- If a retail dispensary is in a village within a town that also permits cannabis retail sales, then the money must be distributed to the town and village as agreed upon by the local governments. If no agreement exists, the money will be split 50-50.
- The money will be distributed on a quarterly basis.



# Municipalities

---

**Cities, towns and villages (not counties) *MAY OPT OUT* of allowing (1) adult-use cannabis retail dispensaries *AND/OR* (2) on-site consumption establishments.**

Municipalities cannot prohibit possession or use, generally.

**However, municipalities are prohibited from developing their own local license system.**

Counties, cities, towns and villages are preempted from adopting any law, rule, ordinance, regulation or prohibition pertaining to the operation of licensure of registered organizations, adult-use cannabis licenses or cannabinoid hemp licenses.

# Municipalities

## Local Opt-Out

**Municipalities may opt out by  
adopting a local law  
subject to a permissive referendum  
on or before December 31, 2021**

- No opt out may occur after December 31, 2021 (BUT only the law needs to be adopted by that date, the referendum can occur after).
- **A local government that previously opted out of retail dispensaries and/or on-site consumption establishments, may opt back in (to either or both) by repealing or amending the relevant law at any time.**
- **Municipalities can only prohibit the retail cannabis dispensaries and the operating of on-site consumption establishments.** Municipalities CANNOT prohibit:
  - cultivating cannabis;
  - processing cannabis;
  - distributing cannabis;
  - delivering cannabis;
  - operating a cooperative;
  - operating a microbusiness; or
  - operating a nursery.
- **A town opt-out only applies to the area of the town outside of any village(s) located therein.**
- **Local laws adopted prior to March 31, 2021, involving adult-use cannabis, have no effect on opting out of retail dispensaries or on-site consumption establishments; a new law must be passed subject to a permissive referendum.**



# Municipalities

## Opt-Out By Cities/Towns

City/Town Referenda are conducted pursuant to Municipal Home Rule Law § 24.

**A local law is not effective until: (1) 45 days after its adoption have passed; and (2) it is approved by the city's/town's electors, IF a petition is filed requiring the local law be approved by a majority vote of the electorate.**

- Petitions must be filed in the clerk's office within 45 days of adoption of the local law.
- Petitions must be signed by a number of electors equal to 10% of the total number of votes cast in the municipality for governor at the last gubernatorial election.
- Signers must be qualified voters who were also registered to vote during the previous general election.

The proposition must be submitted to voters at the next state or local government election, not less than 60 days after the filing of the petition. The petition may also request that a special election be held.

# Municipalities

## Local Time, Place and Manner Restrictions; Other Restrictions

**Local governments MAY PASS LAWS AND REGULATIONS governing the time, place and manner of the operation of licensed cannabis retail dispensaries and/or on-site consumption establishments,** provided such laws or regulations do not make the operation of such licensed entities **unreasonably impracticable** as determined by the Cannabis Board.

- Such laws and regulations may pertain to local zoning and location of licensees, hours of operation and adherence to local building codes.
- All licensees must comply with local zoning regulations (e.g., special use permits, site plan approval, architectural approvals).
- Notwithstanding local regulations, dispensary signage is prohibited except as authorized by the Cannabis Control Board.
- Neither dispensaries nor on-site consumption establishments may be located within 500 feet of school grounds or within 200 feet of a house of worship.

*J. Langey emphasized the highlighted statement and said if this passes in the Town of Cazenovia, it will be important for this Board as the legislative body to look at land use powers to place these businesses where the Board thinks they ought to be. The Board may need to look at this if it comes to pass.*



# Municipalities

## State Environmental Quality Review Law

Every local legislative act, whether local law, ordinance or resolution, *which may affect the environment*, is considered an “action” within the meaning of SEQR and must be reviewed pursuant to SEQR.

It is most likely that any legislative enactments arising from the cannabis program will fall under unlisted actions. Types of legislation relating to the cannabis program falling under SEQR review could include local zoning and planning legislation or public health regulations. Local governments must determine the significance the legislation would have on the environment.

Most legislation pertaining to the cannabis program will not have a significant adverse impact on the environment.

- Such a negative declaration does not require drafting of an Environmental Impact Statement, but it usually requires preparation of a Short Environmental Assessment Form.
- Every negative declaration must identify the relevant areas of environmental concern; thoroughly analyze the relevant concerns; and document the determination, in writing, showing the reasons why the environmental concerns that were identified and analyzed will not be significant (unsupported statements such as “the action will not have a significant impact” or “no significant impacts were identified in the EAF” are not legally sufficient for a negative declaration).

For unlisted actions, the reviewing agency must maintain a file readily accessible to the public containing the negative declaration.

# Municipalities

## Other Provisions

**Police Right to Inspect Licenses Operations.** The Office of Cannabis Management, any authorized representative of the Cannabis Control Board, as well as *local peace and police officers* will be able to inspect all licensed or permitted premises and all records of licensed operators.

- Such inspections cannot be done to interrupt ordinary business or to compromise licensees' safety and security procedures.
- Such inspections can be done to ensure the entity is complying with the Cannabis Law, related regulations, and other applicable State and local building codes, fire, health, safety and other applicable regulations.

**Local Officials' Interest in Cannabis Operations.** Any chief of police, police officer or subordinate of any police department in New York, or any elected village official who manages the police department, is prohibited from having an interest, directly or indirectly, in the cultivation, processing, distribution, or sale of cannabis products, or from offering for sale or recommending to any registered organization or licensee any cannabis products.

# Traffic Safety

---

**The use of cannabis by drivers will remain prohibited and will carry the same penalties as it did previously.**

The State Department of Health will work with the requisite institutions to conduct a controlled research study designed to evaluate methodologies and technologies for detection of cannabis-impaired driving.

- After the study, the Department of Health has the power to create and implement rules and regulations to approve and certify a test for the presence of cannabis in drivers.

# Protections for the Use of Cannabis

## Workplace Safety

**Employers are barred from discriminating against individuals for legal cannabis use.** The Labor Law has been amended to provide that notwithstanding its prohibitions against discrimination, employers are not to be barred from discharging or disciplining an employee if: doing so is mandated by State or federal statute or regulation (e.g., CDL requirements) or doing so would put the employer at risk of losing federal funding or the employee is impaired on the job.

- “Impaired” is when an employee manifests **specific articulable symptoms**, which is an undefined phrase. For now, an employer should focus on “reasonable suspicion” and treat suspected use of cannabis as they would use of alcohol.

Employers are barred from making any hiring decision based upon a positive drug test for cannabis. Drug testing for cannabis is not prohibited explicitly (just for the basis for decisions on hiring, discharging or otherwise discriminating against an employee). **Employers will most likely opt to do away with drug testing for cannabis entirely.**

Employees who are certified to use medical cannabis are deemed to have a disability under the Executive Law and the Civil Rights Law.



# Criminal Justice

---

The cannabis penalty framework will be restructured to avoid the criminalization seen in prohibition (e.g., reduced penalties for possession and sale).

**Law Enforcement Practices.** In a criminal proceeding, no finding or determination of reasonable cause to believe a crime has been committed may be based solely on evidence of the following cannabis-related facts and circumstances (individually or combined):

- the odor of cannabis or burnt cannabis;
- the possession of or the suspicion of possession of cannabis/concentrated cannabis;
- the possession of multiple containers of cannabis without evidence of concentrated cannabis;
- the presence of cash or currency in proximity to cannabis/concentrated cannabis;
- the planting, harvesting, drying, processing or possessing of cultivated cannabis.

*The prohibition with respect to the odor of burnt cannabis does not apply when the investigation is into whether a person is operating a motor vehicle while impaired.* However, the odor does not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.

**Illegal Possession, Use and Sale of Cannabis** The MRTA imposes penalties for activities that are not authorized by the Cannabis Law or the Penal Law (for example, individuals under the age of 21 who are found to be in possession of cannabis are subject to a \$50 civil penalty).

# Record Expungement

---

The MRTA provides extensive procedures for expunging criminal records for many previous cannabis-related convictions automatically. There will also be the option of pursuing an expungement independently, which can be done more quickly than under the automatic process.

**Thank you.**  
*Questions?*



**COSTELLO**  
COONEY & FEARON

**Contact:**

John Langey  
jlangey@ccf-law.com

Stacy Marris  
smarris@ccf-law.com

(315) 422-1152

\*\*\*\*\*

*In closing, J. Langey said a town cannot put this out for mandatory referendum, but a Village can. He said if the folks in the community want to have a vote on this, they have to trigger it by submitting a petition with the required number of signatures.*

*The Town Board had a brief discussion as to what neighboring municipalities are doing.*

*J. Langey encouraged the Board should they choose to “opt out,” they start the process sooner rather than later. There are requirements that need to be met and December 31, 2021 is a hard-fast deadline. In regards to zoning, he said New Woodstock is the easiest one to talk about and in the other areas they could create overlay zones, especially, at the edge of the Village. He said the zoning would have to change to allow for it.*

*The Town Board will discuss this further at their September 8, 2021 work session.*

**At 7:30 p.m., motion by Councilor Golub, seconded by Councilor Andersen to adjourn this meeting. The motion was unanimously approved.**

**Supervisor Zupan declared this meeting adjourned.**

\*\*\*\*\*

**Signed:** Connie J. Sunderman  
Connie J. Sunderman, Town Clerk