

June 1, 2021 Cannabis Webinar Questions and Answers
Presenters: Wade Beltramo, NYCOM; Sarah Brancatella, AOT
Organized by the NYS Tug Hill Commission

1. Does local sales tax revenue sharing still apply between a town and village if the village has dispensaries and the adjacent town opts out?

No - both the village and the town must allow cannabis facilities.

2. How will legalizing cannabis benefit social justice?

Regarding social justice, there are many ways in which the State is seeking to achieve local justice. They are creating funds to help communities negatively impacted. Also, they have goals to award a certain percentage of licenses to MWBE, veterans, farmers, and individuals who have a history of being negatively impacted by the war on drugs.

3. Does a local opt out affect distribution/farming?

The opt-out is ONLY for retail dispensaries and/or on-site consumption establishments. Local governments may NOT opt out of other types of licensed operations.

4. If the permissive referendum to allow pot passes, can municipalities avail themselves of a moratorium to prepare appropriate land use regulations?

The recommendation is no. The question of how to regulate all these licensees from a land use perspective is likely to get tricky.

5. Did you say towns CANNOT survey their residents? Rather suggest roundtables, public hearings?

Correct you cannot hold an advisory referendum to find out how people might vote on an official referendum - but you can hold public hearing.

6. What is in the plans for dealing with folks that may leave a consumption establishment in a condition that would render them unable to operate a motor vehicle. I know it's easy to determine DUI, but as of this time they still do not have a test for this condition. How do we address this as a concern of our neighbors?

The operation of vehicles while impaired is still illegal. The challenge, as you note, is determining whether someone is impaired. This is a real challenge. There still will be training police officers as drug recognition experts (DREs). Testing of THC in the blood stream is not effective in testing impairment, because the metabolite stays in the blood for weeks and sometimes months after its effect and impairment have worn off.

7. We have been asked by a farmer if there has been any discussion about liability of farmers who will be growing cannabis. Will they be held liable for miscreants? Will growers be required to put security fencing around their facilities?

The assumption is that most cannabis growers are going to be indoor facilities. Security measures are an issue that the Cannabis Control Board and the Office of Cannabis Management will address in their rules.

8. Can a microbusiness also dispense?

Yes, microbusinesses are technically authorized to dispense on a limited basis. This is a BIG TO. BE. DETERMINED.
Category

9. Will growing cannabis fall under the regulations of NYS Agriculture & Markets Law? For example, if a property is in an AML approved agricultural district, local government cannot unreasonably restrict ag operations?

If cannabis is grown in an Ag and Market 25AA District (also called a state ag district) there would be the same limitations on local laws - so you would not be able to adopt a local law that's unreasonably restrictive.

10. Will sales occur in the "pot bar"?

Sales are allowed in pot bars, but it must be consumed on site. Similar to how if you have a glass of wine at a bar but don't finish it you have to leave it there.

11. Will cannabis growers be able to sell to Native American reservations in NYS, who might arguably be able to sell it themselves under their sovereignty?

Federal law regarding Native American reservations is a complicated patchwork. The fact that marijuana is still illegal on federal law only adds to the complications. However, the current administration is NOT enforcing the federal government's marijuana regulations. While I do not believe that State licensed entities will be allowed to sell marijuana to the tribal entities. But I wouldn't be surprised if one or more of the tribes grows and sells its own marijuana. As I mentioned, to be determined.

12. If the township receives revenue, how are they allowed to use that?

Any revenue from cannabis sales received by the town is considered general fund revenue - the town can use it for whatever it considers appropriate.

13. How will retail sales revenues be distributed?

Revenue is distributed in proportion to retail sales that take place within the municipality. So, the revenue is going to go to whatever municipality where there are retail sales or on-site consumption.

14. How do we handle drug screening/testing for employees with legalized use?

Testing is NOT allowed unless required by federal law. You cannot prohibit personal use on an employee's own time, and because cannabis is legal you cannot discriminate against an individual if they test positive during a drug test – there will be some things that need to be worked out because testing positive for marijuana use does not automatically mean someone is impaired, pot can stay in your system for a long time. You can discipline an employee if they show up impaired to work.

15. Firefighters in many towns are volunteers and do not need to be licensed CDL drivers. Under this law there is a Federal/State conflict right now with CDL drivers. Should town volunteer firefighters still be allowed to drive firetrucks while either under medical marijuana prescription or recreational use?

Because you don't need a CDL to operate a fire truck the same testing standards don't apply. While a fire company would not be able to prohibit cannabis use during personal time it could have the same standards as employers with respect to discipline / prohibiting someone who is impaired from driving a vehicle.

Existing personnel policies will need to be reviewed to ensure that they comply with the new provisions of the labor law.

16. What about entities that receive federal funds? Cannabis is still considered illegal under federal law.

Yes, this is a huge issue for entities that receive federal funds.

17. If a municipals entities supervisor suspects drug use do they need to be trained under reasonable suspicion guidelines PRIOR to spotting signs of impairment?

Yes, training for drug impairment is likely to become a common needed practice.