

New York's Marijuana Legalization: What Does it Mean for Local Governments?

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The Marijuana Regulation & Taxation Act

- Known as the MRTA
- Chapter 92 of the Laws of 2021
- A.1248-A (Peoples-Stokes)/S.854-A (Krueger)
- Signed Into Law on March 31, 2021
- Legalization Effective Immediately



MRTA

- Purpose
 - a. Create a **Regulated & Taxed** Cannabis Industry In NY &
 - b. Provide for **Social & Economic Justice** Related to Sale & Use of Cannabis



MRTA

- The **Possession & Use** Cannabis Legalized Immediately
- Actual **Sale** of Adult-Use Cannabis Is Not Expected to Begin Until **Late 2022** at the Earliest



MRTA

- Enacts Chapter 7-A, Cannabis Law
- Substantially Amends Numerous Other Provisions of State Law to Implement Adult-Use Cannabis
- Establishes Two New State Agencies
 1. Cannabis Control Board
 2. Office Of Cannabis Management



MRTA

- Individuals & Organizations Must Obtain a License Before

Engaging In

- a. Cultivating,
- b. Processing,
- c. Distributing,
- d. Delivering,
- e. Dispensing Cannabis, or

Operating a

- a. Cooperative,
- b. Microbusiness,
- c. Nursery, or
- d. On-Site Consumption Establishment



Legalization of Use

- Penal Law Article 222 Cannabis
- 21 Years & Older
- Possession of Up to 3 Ounces of Cannabis & 24 Grams of Concentrated Cannabis
- Consumption
- Paraphernalia



Local Regulation

Local Opt-Out of Retail Sales

- Cities, Villages, & Towns* May Opt Out of Allowing **Retail Dispensaries** &/or **On-Site Consumption Establishments** From Locating And Operating Within Their Boundaries



Local Regulation

▪ Local Opt-Out of Retail Sales

- Must Adopt a **Local Law** Subject to a **Permissive Referendum On or Before December 31, 2021**
- May NOT Opt-Out After December 31, 2021
- If a Local Government Opts-Out, It May Opt Back In at Any Time



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Local Regulation

▪ Local Opt-Out of Retail Sales

- Local Laws Adopted Prior to March 31, 2021 Prohibiting Cannabis Use or Businesses Have **No Effect** on Opting Out of Retail Sales Under Cannabis Law § 131



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Permissive Referendum

▪ Cities and Towns

- Local Law Not Effective Until:
 1. 45 Days After Its Adoption Have Passed; &
 2. It Is Approved by Electors, **IF** a Petition Is Filed Requiring the Local Law Be Approved by a Majority Vote of the Electorate



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Permissive Referendum

▪ Cities and Towns

- Petitions Must Be Filed In Clerk's Office Within **45 Days of Adoption** of Local Law
- Petitions Must Be Signed by a Number of Electors Equal to **10% of Total Number of Votes Cast in City for Governor** at the Last Gubernatorial Election



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Permissive Referendum

▪ Cities and Towns

- **Signers** of the Petition Must Be **Qualified Voters** Who Were Also Registered to Vote During the Previous General Election



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Permissive Referendum

▪ Cities and Towns

- The Proposition Submitted to Voters at Next State or Local Government Election, Not Less Than 60 Days After the Filing of the Petition
- Petition May Also Request That a Special Election Be Held



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Permissive Referendum

▪ Villages

- Village Referenda are Conducted Pursuant to Article 9 of the NYS Village Law
- Village Board of Trustees May Bypass the Petition Process by Submitting a Permissive Referendum To Voters Upon Its Own Motion



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Permissive Referendum

▪ Villages

- Petition Must Be Filed with Village Clerk Within **30 Days** of Adopting Local Law
- Petition Must Be Signed by Village Electors Numbering **at Least 20%** of **Village Electors**, As Shown on the Register of Electors for the Previous General Village Election



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Permissive Referendum

▪ Villages

- Board of Trustees May, Upon Its Own Motion, Submit the Local Law to a Referendum, Eliminating the Need for a Petition



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Permissive Referendum

▪ Villages

- If a Petition Is Filed After the 1st Day of the Month In Which a General Village Election Is to be Held & Before the 1st Day of the Month Two Months Prior to the Next General Village Election, then **Special Election** to Be Held Not Less Than 10, Nor More Than 60, Days After The Filing Of The Petition



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Permissive Referendum

▪ Villages

- **Special Election** Examples:
 - **March Elections** - Petition filed **after** March 1st & **before** January 1st
 - **June Election** - Petition filed **after** June 1st & **before** April 1st
 - **November Election** - Petition filed **after** November 1st & **before** September 1st



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Permissive Referendum

▪ Villages

- **General Election** Examples:
 - **March Elections** - Petition filed **on or after** January 1st & **on or before** March 1st
 - **June Election** - Petition filed **on or after** April 1st & **on or before** June 1st
 - **November Election** - Petition filed **on or after** Sept 1st & **on or before** Nov 1st



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Local Regulation

▪ State Preemption

- Counties, Cities, Villages, & Towns Are Preempted From Adopting Any Law, Rule, Ordinance, Regulation or Prohibition Pertaining to the **Operation or Licensure** of Registered Organizations, Adult-use Cannabis Licenses Or Cannabinoid Hemp Licenses



Local Regulation

▪ Time, Place, & Manner Restrictions

- Cities, Villages, & Towns May Nonetheless Regulate **Time, Place & Manner** of **Adult-Use Cannabis Retail Dispensaries** and/or **On-Site Consumption Sites**, Provided Such Regulations Do Not Make Their Operation **Unreasonably Impracticable** As Determined by the Cannabis Board



MRTA

- Individuals & Organizations Must Obtain A License Before

Engaging In

- Cultivating,
- Processing,
- Distributing,
- Delivering,
- Dispensing Cannabis**, or

Operating A

- Cooperative,
- Microbusiness,
- Nursery, or
- On-Site Consumption Establishment**



Local Regulation

▪ Time, Place, & Manner Restrictions

- All Adult-Use Licensees Must Comply With Local Zoning Regulations (Not Expressly Addressed in the MRTA)
 - Special Use Permits
 - Site Plan Approval
 - Architectural Approvals



Local Regulation

▪ **What About SEQR?**

- Unlisted Action
- Negative Declaration



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Notification to Municipalities

- Prior to Submitting an Application, Adult-Use License Applicants Must Notify Local Governments of their Intention to Locate Operations within the Municipality
- Local Governments Have an Opportunity to Comment on the Proposed Operation & License Application



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Right to Inspect

- Local Law Enforcement May Inspect All Licensed Premises In a Manner So As Not To Interrupt Ordinary Business & Not to Compromise Safety & Security Procedures



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Revenue from Cannabis Sales

▪ **NYS Tax Law Article 20-C**

- Tax on Adult-Use Cannabis Products
- State Taxes on Distribution & Retail Sale
- To Fund Numerous State Programs & General Coffers



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Revenue from Cannabis Sales

▪NYS Tax Law Article 20-C

- Tax Law § 493(c) - 4% Local Tax on Retail Sale of Adult-Use Cannabis
- 1% to the County In Which Sale Occurs
- 3% to City, Village, or Town In Which the Sale Occurs
- No Restrictions on Use of These Funds



Revenue from Cannabis Sales

▪NYS Tax Law Article 20-C

- If a Local Government has **Opted Out**, It Will **Not Receive** Any Revenue from the Local Cannabis Sales Tax



Revenue from Cannabis Sales

▪NYS Tax Law Article 20-C

- For Villages, if Your Town Permits Cannabis Retail Sales, Then 3% is Distributed Between the Town & Village As Agreed Upon by the Town & Village Governing Bodies
- If No Agreement, the 3% is **Evenly** Divided Between the Village & the Town



Personal Cultivation

▪Penal Law § 222.15

- Up to 3 Mature Cannabis Plants & 3 Immature Cannabis Plants Per Individuals
- Up to 6 Mature Cannabis Plants & 6 Immature Cannabis Plants Per Household



Personal Cultivation

▪ Penal Law § 222.15

- Must be Securely Stored
- Cities, Villages, Towns, & Counties May Enact **Reasonable Regulations** of Personal Cultivation & Home Possession
- Local Governments May Not Prohibit Personal Cultivation or Possession



Personal Cultivation

▪ Phase-In Period

- Personal Cultivation Is Not Allowed **Until** the Office of Cannabis Management Issues Regulations for Home Cultivation & Storage
- Office of Cannabis Management Must Issue Regulations **Medical Cannabis** Patients No Later Than September 30, 2021



Personal Cultivation

▪ Phase-In Period

- Office of Cannabis Management Must Issue Regulations for **Adult Use** No Later Than 18 Months After 1st Retail Sale
- 2023 or 2024?



Protections for Cannabis Users

▪ Generally

- Cannabis Law § 127 Prohibits Discriminated Against Individuals For Engaging In Conduct Permitted Under The Cannabis Law



Protections for Cannabis Users

▪ Housing

- **Landlords** Are Expressly Prohibited From Refusing to Lease to And May Not Otherwise Penalize An Individual Solely For Conduct Authorized by the Cannabis Law, Except
 - a. If Subject to Federal Law; or
 - b. If Property Has A Smoke-Free Policy, It Is Not Required to Permit Smoking On Its Premises



Protections for Cannabis Users

▪ Educational Institutions

- **Schools, Colleges, & Universities** May Not Refuse to Enroll & May Not Otherwise Penalize Individuals Solely For Conduct Allowed By The Cannabis Law, Except
 - a. If Subject to Federal Law; or
 - b. Code of Conduct Prohibiting Cannabis Use on Basis of School's Sincere Religious Belief



Employer Concerns

▪ Labor Law § 201-d

- Employers are Barred From Discriminating Against Individuals for Cannabis Use



Employer Concerns

▪ Labor Law § 201-d

- Employers Are **Not Be Barred** From Discharging or Disciplining an Employee
 - a. If Doing So Is Mandated by State or Federal Statute or Regulation (e.g., CDL Requirements) or
 - b. If Employee Is **Impaired While on the Job**



Sale of Cannabis

▪ Cannabis Law § 85

- Must be at Least 21
- May Not be Visibly Intoxicated
- May Not be Sold If Suspected It Will be Sold or Given Away in Violation of State Law



Law Enforcement Impact

▪ Penal Law § 222.05

- Odor of Cannabis or Lawful Possession of Cannabis May Not be Reasonable Cause
- Exception - Odor of Burnt Cannabis While Investigating Impaired Driving



Public Consumption

▪ Public Health Law Article 13-E

- Prohibits Smoking & Vaping In

<ul style="list-style-type: none"> a. Places of Employment; b. Bars; c. Restaurants; d. Public Mass Transportation; e. Public Transportation Terminals; 	<ul style="list-style-type: none"> e. Youth/Children Facilities; f. Public & Private Colleges, Universities & Other Educational Institutions, g. Hospitals & Residential Health Care Facilities; h. Indoor Arenas; & i. MORE
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Public Consumption

▪ Penal Law § 222.10

- Individuals May Not Smoke or Vape Cannabis

<ul style="list-style-type: none"> a. On School Grounds, b. Within 100 Feet of a School or Library Entrance, Exit or Outdoor Area (Except This Does Not Apply to Smoking/Vaping In a Residence or on Residential Property), Or c. In or On a School Bus



Public Consumption

▪ **Local Regulation**

- Local Governments Are Not Preempted From Imposing Local Smoking/Vaping Restrictions More Stringent Than Article 13-E
- Local Governments May Impose Their Own Smoking/Vaping Restrictions for Municipally-Owned or Controlled Property, Including Parks And Playgrounds



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Illegal Use & Sale

▪ **Penal Law Article 222**

- Penalties Imposed for Possession & Use Not Authorized Under NYS Law
- Licensees Will Be Subject to Civil Penalties & License Suspension & Revocation for Violations



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Equity & Justice

- **Expungement of Criminal Records**
- **Social Equity Programs - Goal of Awarding 50% of Licenses to Social & Economic Equity Applicants**



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Still A Lot To Be Determined

Questions?



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