



# **(Still) Navigating the Haze – Regulating Cannabis in Your Municipality**

**Tug Hill 2025 Local Government Conference**  
***April 1, 2025***

*Presented by*

**Katie Hodgdon, *Association Counsel***  
**Lori Mithen-DeMasi, *Chief Counsel***

# MRTA Overview

- General overview of MRTA
- Licensing evolution
  - Litigation and 2025 status
- Municipal rulemaking regulations
  - Time, place, manner
  - Measuring distances
  - Public convenience licenses
  - Deliveries and drive-thrus
- Microbusinesses
- Cannabis as a crop

# Topics for Today

- Revenue!
- Showcases (aka – slow rollout)!
- Enforcement
  - Unlicensed sale of cannabis – 2024 budget
- Employment laws related to cannabis
  - Case law update – employment and cannabis
- Any other questions!



# MRTA Overview

Enacted March 31, 2021 – effective immediately

- Legalized adult recreational use / possession of cannabis, among other things
- Created Office of Cannabis Management and Cannabis Control Board

Sale of recreational cannabis began in early 2023:

- As of March 2025: (65 in Feb 2024)
- [cannabis.ny.gov](https://cannabis.ny.gov)

There are currently 336 adult-use  
cannabis dispensaries across  
New York State.

[VIEW LOCAL RETAIL DISPENSARY MAP](#)


Search:

List results are filtered as you type.

Entity Name	Address	City	Zip Code	Website
Gotham Buds	248 W 125th St	New York	10027	<a href="https://gothambudany.com">gothambudany.com</a>
Housing Works Cannabis, LLC	750 Broadway	New York	10003	<a href="https://hwcannabis.co">hwcannabis.co</a>
Smacked Village	144 Bleecker St	New York	10012	<a href="https://getsmackedonline.com">getsmackedonline.com</a>
Just Breathe	75 Court St	Binghamton	13901	<a href="https://justbreatheNY.org">justbreatheNY.org</a>
The Travel Agency Union Square	835 Broadway	New York	10003	<a href="https://thetravelagency.co">thetravelagency.co</a>
William Jane Corporation	119-121 E State St	Ithaca	14850	<a href="https://williamjane420.com">williamjane420.com</a>
Good Grades, LLC	162-03 Jamaica Ave	Jamaica	11432	<a href="https://goodgradesnyc.com">goodgradesnyc.com</a>
Upstate Canna Co	1613 Union St	Schenectady	12309	<a href="https://upstate-canna.co">upstate-canna.co</a>
Dazed	33 Union Sq. W	New York	10003	<a href="https://dazed.fun">dazed.fun</a>
Legacy Dispensary	1839 Central Ave	Albany	12205	<a href="https://legacy-dispensary.com">legacy-dispensary.com</a>

# MRTA Overview

## Oneida county: Adult-use / medical

**LOCAL**  
Retail Dispensaries - Legal Online Cannabis Activities Locator  
NYS Office of Cannabis Management (OCM)


Full-featured LOCAL Map

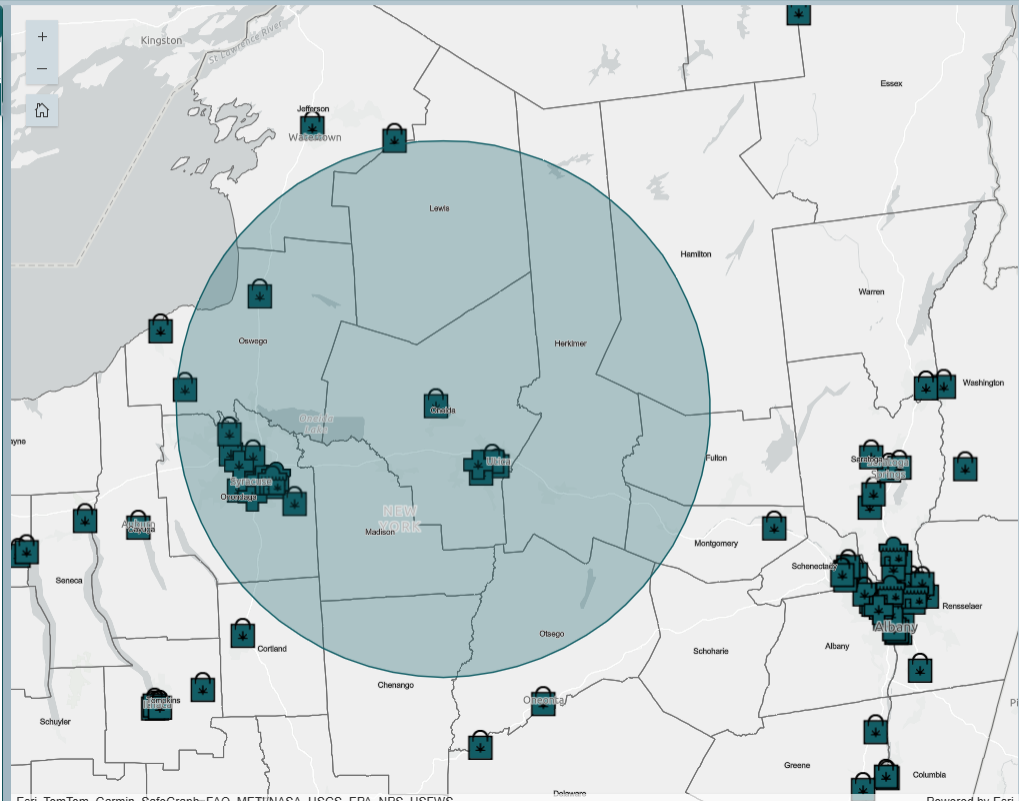
Oneida County, NY, USA

**Search result**  
Oneida County, New York

Selected Location  
50 Miles








Input location  
13440, Rome, New York








 Cannabis Licenses - Active 22



Esri, TomTom, Garmin, SafeGraph, FAO, MET/NASA, USGS, EPA, NPS, USFWS


Powered by Esri

**Active Cannabis Licenses**  
Retailers  
 Adult-Use Dispensary  
 Microbusiness Dispensary  
 Adult-Use Dispensary - Coming Soon  
 Microbusiness Dispensary - Coming Soon  
Medical  
 Medical Dispensary  
 Medical & Adult-Use Dispensary  
 Medical Dispensary - Coming Soon

**Filter Licenses:**  
 Retail Dispensaries ☐  
 Medical Dispensaries ☐  
 Open Dispensaries ☒  
 Individuals from a community disproportionately impacted by the enforcement of cannabis prohibition ☐  
 Minority-Owned Businesses ☐  
 Service-Disabled Veteran-Owned Businesses ☐  
 Women-Owned Businesses ☐

# MRTA Overview

## Tug Hill: Adult-use

**LOCAL**  
Retail Dispensaries - Legal Online Cannabis Activities Locator  
NYS Office of Cannabis Management (OCM)

Full-featured LOCAL Map

13601

Search result

13601, Watertown, New York

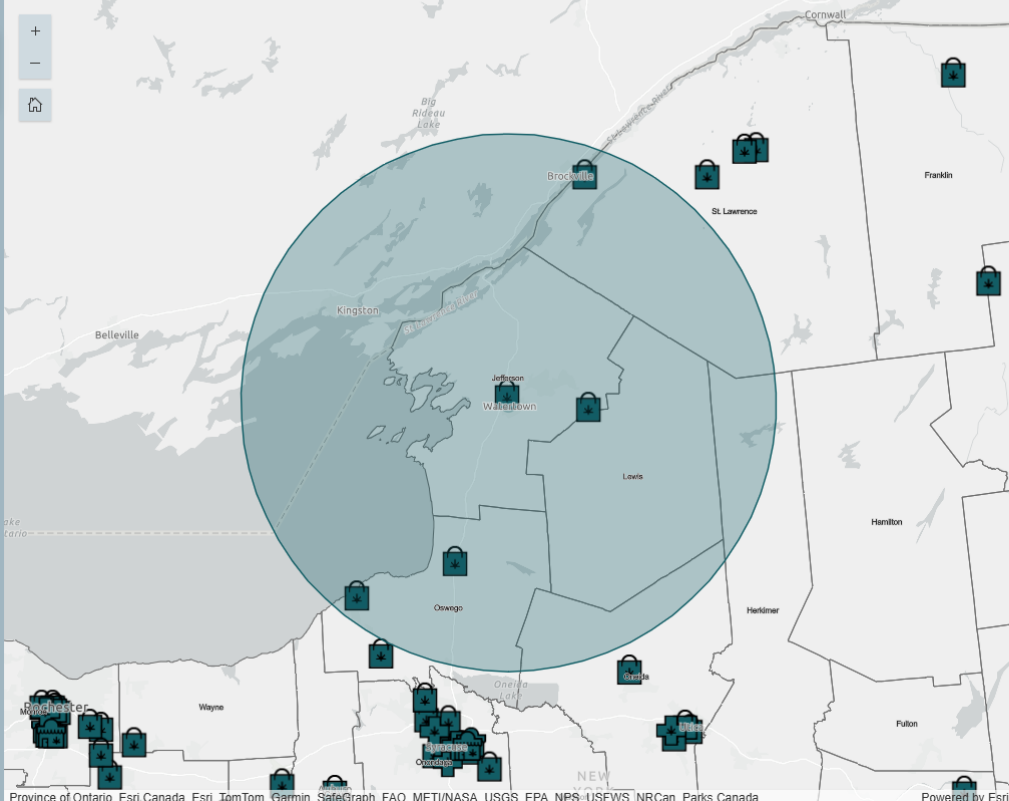
Selected Location

50 Miles

Input location

418-418 Black River Pkwy, Watertown, New York, 13601

Cannabis Licenses - Active 5



Province of Ontario, Esri, Canada, Esri, TomTom, Garmin, SafeGraph, FAO, METI/NASA, USGS, EPA, NPS, USFWS, NRCAN, Parks Canada

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Active Cannabis Licenses

Retailers

Adult-Use Dispensary

Microbusiness Dispensary

Adult-Use Dispensary - Coming Soon

Microbusiness Dispensary - Coming Soon

Medical

Medical Dispensary

Medical & Adult-Use Dispensary

Medical Dispensary - Coming Soon

Filter Licenses:

Retail Dispensaries

Medical Dispensaries

Open Dispensaries

Individuals from a community disproportionately impacted by the enforcement of cannabis prohibition

Minority-Owned Businesses

Service-Disabled Veteran-Owned Businesses

Women-Owned Businesses

# MRTA Overview

- Tug Hill: Microbusiness dispensary - coming soon!
- What is a microbusiness? (...to be discussed!)

The screenshot displays the LOCAL (Legal Online Cannabis Activities Locator) interface, a tool provided by the NYS Office of Cannabis Management (OCM). The interface features a map of New York State with various dispensary locations marked by icons. A large blue circle highlights a specific region in the Tug Hill area. The left sidebar contains a search bar with the input "13601" and a "Search result" dropdown. Below the search bar, there is a "Selected Location" section with a map icon, a distance filter set to "50 Miles", and an "Input location" section with the address "418-418 Black River Pkwy, Watertown, New York, 13601". The bottom of the sidebar shows a filter for "Cannabis Licenses - Active" with a count of 8. The right sidebar lists "Active Cannabis Licenses" categorized into "Retailers" and "Medical". The "Retailers" section includes "Adult-Use Dispensary", "Microbusiness Dispensary", "Adult-Use Dispensary - Coming Soon", and "Microbusiness Dispensary - Coming Soon". The "Medical" section includes "Medical Dispensary", "Medical & Adult-Use Dispensary", and "Medical Dispensary - Coming Soon". Below the license list is a "Filter Licenses:" section with several toggle switches: "Retail Dispensaries" (checked), "Medical Dispensaries" (checked), "Open Dispensaries" (checked), "Individuals from a community disproportionately impacted by the enforcement of cannabis prohibition" (unchecked), "Minority-Owned Businesses" (unchecked), "Service-Disabled Veteran-Owned Businesses" (unchecked), and "Women-Owned Businesses" (unchecked). The map itself shows various counties including Broome, Sullivan, St. Lawrence, Franklin, Hamilton, Herkimer, Fulton, Oswego, and Lewis. A legend at the bottom of the map lists data sources: Province of Ontario, Esri, Canada, Esri, TomTom, Garmin, SafeGraph, FAO, METI/INASA, USGS, EPA, NPS, USFWS, NRCAN, Parks Canada, and is powered by Esri.

**LOCAL**  
Retail Dispensaries - Legal Online Cannabis Activities Locator  
NYS Office of Cannabis Management (OCM)

13601  
Search result  
Selected Location  
50 Miles  
Input location  
418-418 Black River Pkwy, Watertown, New York, 13601  
Cannabis Licenses - Active 8

**Active Cannabis Licenses**  
Retailers  
Adult-Use Dispensary  
Microbusiness Dispensary  
Adult-Use Dispensary - Coming Soon  
Microbusiness Dispensary - Coming Soon  
Medical  
Medical Dispensary  
Medical & Adult-Use Dispensary  
Medical Dispensary - Coming Soon

**Filter Licenses:**  
Retail Dispensaries  
Medical Dispensaries  
Open Dispensaries  
Individuals from a community disproportionately impacted by the enforcement of cannabis prohibition  
Minority-Owned Businesses  
Service-Disabled Veteran-Owned Businesses  
Women-Owned Businesses

Province of Ontario, Esri, Canada, Esri, TomTom, Garmin, SafeGraph, FAO, METI/INASA, USGS, EPA, NPS, USFWS, NRCAN, Parks Canada  
Powered by Esri

# MRTA Overview

— Note that \*\*\*  
reference delivery-  
yes, delivery is  
authorized

— Not to New  
Jersey, though!

— \*\* Microbusiness  
retail locations

Entity Name	Address	City/Town	Zip	Website
Diamond Tree Dispensary	2700 Erie Blvd E	Syracuse	13224	<a href="http://diamondtreedispensary.com">diamondtreedispensary.com</a>
Buzzsaw Cannabis Company**	5044 Route 17M	New Hampton	10958	<a href="http://buzzsawcannabis.com">buzzsawcannabis.com</a>
Root 9 Dispensary	1546 Route 9	Wappingers Falls	12590	<a href="http://root9dispensary.com">root9dispensary.com</a>
Misfits Dispensary	420 Jefferson Rd, Ste 2	Rochester	14623	<a href="http://misfitsdispensary.com">misfitsdispensary.com</a>
The Plug	428 Rogers Ave	Brooklyn	11225	<a href="http://theplugny.com">theplugny.com</a>
Juniper NY LLC (dba SOFAClub)	229 Avenue B	New York	10009	<a href="http://sofacub.nyc">sofacub.nyc</a>
Herbology	304 Ellery St	Brooklyn	11206	<a href="http://herbologynyc.com">herbologynyc.com</a>
Electric City Cannabis	1354 Lower Broadway	Schenectady	12306	<a href="http://electriccitycannabisco.com">electriccitycannabisco.com</a>
Flower City Dispensary	8053 Pittsford Victor Rd	Victor	14564	<a href="http://nyflowercitydispensary.com">nyflowercitydispensary.com</a>
Peace, Love, & Bud	320 S Transit St	Lockport	14094	<a href="http://plbud.com">plbud.com</a>
Beleaf Calverton	4462 Middle Country Rd	Calverton	11933	<a href="http://beleafny.com">beleafny.com</a>
Cannabis Central	1520 Crescent Rd	Clifton Park	12065	<a href="http://shopcannabiscentral.com">shopcannabiscentral.com</a>
Farmers Choice Dispensary	18 Westage Dr	Fishkill	12524	<a href="http://farmerschoicedispensary.com">farmerschoicedispensary.com</a>
Domes Dispensary	268 Forest Hill Dr	Kingston	12401	<a href="http://domesdispensary.com">domesdispensary.com</a>

Previous 1 ... 9 10 11 ... 14 Next

\*\*\*Entities marked with \*\*\* and no address are **Temporary Delivery Only** locations. **No in-person or pre-order sales are allowed at this location.** For a list of areas that are available for delivery, please check the licensee's website directly.

\*\*Entities marked with \*\* are **Microbusinesses with Retail Locations**.



# MRTA / Legal Overview

- **Cannabis Law** – March 2021
- **State Regulations**: 9 NYCRR Title 9, Subtitle B, Chapter II
  - Municipal rulemaking and licensing regulations finalized on September 27, 2023
  - 4 year process- wrinkles are *still* being ironed out regarding licensing and litigation
- **Local land use / zoning regulations**
  - Subject to state regulatory parameters: time, place, and manner

# Opt-Outs

- Too late to opt out now!! Deadline was December 31, 2021
- Only opting out of dispensaries / on-site consumption – cannot opt out of other licenses
- Cannabis cultivation and cannabis processing licenses can still be granted in opt-out municipalities
- \*As of March 2025, OCM data indicates 842 localities opted out of dispensaries and / or on-site consumption premises
  - February 2023- 844, so two that opted out opted back in!
- If opted out, can opt back in via local law
  - Doctrine of Legislative Equivalency

# Licensing Updates

# Licensing

Multiple different types of adult use licenses:

- Cultivator
- Processor
- Distributor
- **Retail Dispensary**
- Delivery
- Nursery
- **On-site consumption**
- And more!

# Licenses and Regulations

- Initial rollout: Conditional licenses that required “justice involved” individuals that had a presence in NYS and were convicted or had a family member (parent, spouse, child, dependent) that was convicted of a marijuana-related offense
- Initial CAURD license applications accepted Aug-Sep 22
- Late 2022 – first brick and mortar conditional adult-use retail dispensaries opened, sales began early 2023
- February 2023 - 4 CAURD licenses issued / operating,  
Feb 2024 – 65 issued / operating, April 2025 366!

# Licenses and Regulations

- Also late 2022- Variscite case- requiring NYS presence for conditional licenses violates dormant Commerce Clause of US Constitution
  - *Variscite NY One Inc v State of New York*
    - Court agreed on injunction and limited injunction to one licensing area in the Finger Lakes region- parties settled in May 2023
- But! February 4, 2024- Second Circuit District Court decision: *Variscite NY Four and Variscite NY Five v NYS Cannabis Control Board*

# Licenses and Regulations

- Variscite filed suit asserting that the November and December 2023 license process violated the dormant Commerce Clause, as the state “prioritized” and gave extra weight to certain applications
  - “SEE” Applicants— minority or women-owned business, distressed farmers or service-disabled veterans, as dictated by the state’s “Social and Economic Equity” Plan (CL section 76)
  - “CDI” Applicants- applicants from communities disproportionately impacted by enforcement of cannabis prohibition

# Licenses and Regulations

- SEE applicants are given extra priority if a majority owner or their relative were convicted of a marijuana-related offense under New York law prior to March 2021
  - Not required to be a resident of NYS
- Variscite argued that requiring applicant or relative to have NY conviction in order to have “extra priority” violates dormant Commerce Clause
- State argued that the dormant Commerce Clause does not apply to NY’s licensing program because there is no interstate market for legalized cannabis



# Licenses and Regulations

- Court indicated there is a split of authority on whether the dormant Commerce Clause applies to state cannabis licensing requirements
  - First Circuit in Maine only court to directly address cannabis licensing, finding that residency requirement for medical cannabis dispensaries violated dormant Commerce Clause
  - Ninth Circuit – dormant Commerce Clause does not apply to federally illegal markets and citizens do not have a legal interest in participating in a federally illegal market
    - Market would facilitate illegal interstate activity

# Licenses and Regulations

- Second Circuit district court agreed with Ninth Circuit-  
“Congress exercised its Commerce Clause power to pass the Controlled Substances Act and thereby prohibited a national market for cannabis”
- Since national market for cannabis is illegal, it makes little sense to apply dormant Commerce Clause to state licensing structure- so doing would only encourage out-of-state participation in NY market, which is contrary to CSA

# Licenses and Regulations

- NY licensing and weighted system for applicants does NOT violate US Constitution
- Step in the right direction for the continued rollout of adult-use licenses – but appeal was argued in January 2025...stay tuned!



# Licenses and Regulations

- August 2023 –In *Fiore et al v Cannabis Control Board*, a group of veterans sought an injunction in the CAURD licensing process, asserting that the state was prioritizing justice-involved individuals over service-disabled veterans, minority and women-owned businesses (CL section 87, 9 NYCRR 121.1)
- Supreme Court (Albany) agreed, issuing an injunction on the licensing process for more than three months (August-November)
- November 2023- parties settled- each receive a license and new licenses begin April 1, 2024

# Licenses and Regulations

- So, where are we today?
- Still have lawsuits – this time over distance regulations!
- Actualize Dispensary et. al v Cannabis Control Board – four licensees filed suit asserting their “proximity protections” were violated when other licensees were granted licenses to operate within 1,000 feet of their operation
- On the other side – Astrid Holdings v OCM – license was denied because lease located near other dispensary

# Licenses and Regulations

So, where are we today?



# Licenses and Regulations

- Is there still a justice component in the application process?
  - Yes – Cannabis Law section 87 required state to create social and economic equity plan (SEE) and prioritize applicants from CDIs and those that qualify as minority or women-owned business, distressed farmers, or service-disabled veterans
  - Goal to provide at least 50% licenses to SEE and CDI applicants

# Licenses and Regulations

- License applications not considered unless:
  1. Applicant provides proof of control over proposed location (full license);
  2. Applicant provides proof of notification to municipality (full license); and
  3. Applicant receives a location determination from OCM regarding whether location meets proximity / distance requirements



# Licenses – Notice to Municipalities

- Cannabis Law § 76 - Between 270 and 30 days before applying for a license, retail or on-site applicant has to notify municipality of intention to file
- Localities can express an opinion for or against the granting of licenses
  - Opinion becomes a part of the application record which OCM uses to make recommendation to CCB to grant or deny license
  - **Locality has 30 days from receipt of notification to express an opinion – may request additional time (no more than 30 additional days) in writing and show a reasonable documented effort for extension (9 NYCRR 119.3 [d])**

# Licenses and Regulations

- How many licenses have been issued?

**FOR IMMEDIATE RELEASE:**

March 20, 2025

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**Office of Cannabis  
Management**

**CANNABIS CONTROL BOARD APPROVES 101  
ADULT-USE LICENSES, TOTAL ADULT-USE  
LICENSES ISSUED TO DATE: 1,614**

*Board Advances Proposed Changes to Packaging and Labeling  
Regulations Following Robust Public Input*

*Trade Practices Bureau Provides Key Updates on Active Investigations*

*Number of Adult-Use Dispensaries Open & Operating Across the  
Empire State Increases to 330*

# Licenses and Regulations

- How many licenses have been issued?

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## *Adult-Use License Approvals*

The CCB approved 101 new adult-use cannabis licenses, bringing the total to 1,614, including 255 CAURD licenses, 55% of which are held by Social and Economic Equity (SEE) licensees.

The 101 licenses issued include:

1

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<b>The 101 licenses include:</b>	<b>#</b>
Adult-Use Cultivator License:	2
Adult-Use Distributor License:	14
Adult-Use Microbusiness License:	14
Adult-Use Processor License:	42
Adult-Use Retail Dispensary License:	29

# Time / Place / Manner Regulation Update

# Time, Place, and Manner

- Municipalities may adopt local laws regulating time, place, and manner of retail and on-site consumption establishments
- Local laws can't be “unreasonably impracticable”
- Preempted from regulating ANYTHING ELSE.  
Regulations explicitly say:
  - no community host benefit agreements
  - no additional fees or taxes

# Time, Place, and Manner

What are allowable time, place, and manner restrictions?

Hours of operation for retail shops

- Can't operate between 2:00 a.m. to 8:00 a.m., UNLESS
  - Express written permission given by municipality
  - OR the municipality passes a local law, authorizing operation during those hours; and
- Can't have local law restricting operating hours to less than 70 hours a week, unless licensee agrees

# **Time, Place, and Manner**

Hours of operation for on-site consumption establishments

- Can't have a local law allowing on-site to operate between 4:00 a.m. and 8:00 a.m
- Can't have local law limiting hours of operation to less than 70 hours a week unless licensee

# Time, Place and Manner

What else are permissible time/place/manner subjects?

- Visual or architectural integrity of the building if located within historical districts;
- Parking;
- Traffic control, including, but not limited to, pedestrian and vehicular traffic;
- Noise;



# **Time, Place and Manner**

- Odor (consistent with Public Health Law Article 13-e) and the Clean Indoor Air Act, EXCEPT;
  - Preempted from setting ventilation or odor control standard for indoor on-site consumption sites unless the standard is ALSO applicable to all indoor areas of any businesses that allow the tobacco smoking or vaping
  - Can only require distance of 20 ft or less between outdoor area of on-site consumption site & adjacent public thoroughfare
    - Otherwise preempted
  - Cannabis Board can also require a greater distance

# Unreasonably Impractical Local Laws

- Claimant can bring claim before OCM contesting validity of local law (but how?)
- Board may (not must) conduct review and issue advisory opinion on whether law is unreasonably impracticable
- OCM will send a copy of advisory opinion to claimant and municipality

# Unreasonably Impractical Local Laws

If local law adopted before advisory opinion issued:

- opinion finding unreasonably impractical acts as presumptive evidence that local law violates Cannabis Law § 131 (2)

If proposed (not adopted) local law found to be unreasonably impractical:

- municipality preempted from adopting local law

# Distance Regulations

# Measuring Distances

- Regulations provide specific distance parameters for certain entities:
- **House of worship**: a whole building owned, leased or used by a religious corporation, which is used **exclusively** as a meeting place for divine worship or other religious observances presided over by a member of the clergy

# Measuring Distances

- Use does not cease to be “exclusively” used as house of worship if incidental uses occur, including but not limited to:
  - Games of chance or bingo;
  - Fundraisers;
  - Use by other religious groups;
  - Social activities for the congregation;
  - Private social functions;
  - Bereavement counseling, blood drives, support for conditions or diseases, exercise classes; and
  - Acceptance of funds to defray cost of third-party use of the structure (9 NYCRR 119.4 [1])

# Measuring Distances

- **School grounds:** any building, structure and surrounding outdoor grounds, including entrances and exits, contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries
- **Public youth facility:** a location or structure owned by a government or government subdivision or agency, that is accessible to the public, where the primary purpose is to provide recreational opportunities or services to children or adolescents of whom the primary population is reasonably expected to be 17 years of age or younger

# Measuring Distances

- No AURD, microbusiness, ROD or on-site consumption license will be granted:
  - On the same road and within 200 feet of house of worship entrance;
  - On the same road and within 500 feet of school entrance; and
  - On the same road and within 500 feet of structure or grounds of public youth facility if locality adopted local law
    - Authority to adopt local law pursuant to time, place and manner regulations set forth in 9 NYCRR 119.2
    - \*\*This distance requirement does NOT apply to public youth facilities and CAURD licenses (9 NYCRR 119.2 [10])



# Measuring Distances

- **Preexisting licenses:** No right, privilege, permit, variance or approval shall be denied to any dispensary, microbusiness, ROD or on-site consumption premises that **preexisted** the establishment of and is:
  - On the same road and within **200 feet** of **house of worship** entrance;
  - On the same road and within **500 feet** of **school** entrance; and
  - On the same road and within **500 feet** of structure or grounds of **public youth facility** if locality adopted local law

# Measuring Distances

- Where will the 200 / 500 foot distance be measured from?
  - Straight line from the center of the nearest entrance of licensed premises to:
    - The **center of the nearest entrance** of the house of worship, school or public youth facility
    - If no entrance exists, the nearest **structure of a public youth facility**
    - If no structure exists, **the nearest point of the grounds of the public youth facility's legally defined boundary lines**
    - If no clear delineation of grounds, **the nearest point of equipment with the primary purpose of being used by the youth**

# Measuring Distances

- What is an entrance?
  - Main door regularly used to give ingress to the general public
  - If house of worship, school or public youth facility entrance is set back from a public thoroughfare, walkway or stairs are deemed the entrance and measurement is taken to the center of the walkway or stairs where it meets the building line
  - Cellars and back and side doors are NOT points of measurement

# Measuring Distances

- What if the house of worship, school, public youth facility or licensed premises is located on a corner?!
- It is considered to be on both streets, regardless of whether there is an entrance
- For purpose of calculating “on the same street and within 200/500 feet”

# Measuring Distances

- No *on-site consumption* license will be granted:
- Within 500 feet of three or more existing on-site consumption premises, unless the Board (state) has determined that issuing the license would promote public convenience and advantage

# Measuring Distances

- **Density** – dispensary and microbusiness—**Effective through December 31, 2023:**
- No dispensary or microbusiness license will be granted:
- Within 1,000 foot radius of another dispensary or microbusiness in localities with a population of 20,000 or more
- Within 2,000 foot radius of another dispensary or microbusiness in localities with a population of 20,000 or less
  - Unless board determines placement promotes “public convenience and advantage”

# Measuring Distances

- **Density** – Medical dispensaries
- **Still in effect:**
- No ROD license shall be granted:
  - Within 1,000 foot radius of another dispensary, ROD licensed or microbusiness in localities with a population of 20,000 or more
  - Within 2,000 feet of another dispensary or, ROD license or microbusiness in localities with a population of 20,000 or less
    - Unless board determines placement promotes “medical necessity”

# **Licenses – “Public Convenience”**

- Distance requirements no longer in effect post 2023 but prior to that, CCB could grant licenses within the distance radius if such license would promote public convenience and advantage, including:
  - (1) the number, classes, and character of other licenses in proximity to the premises and in the particular municipality or subdivision thereof;
  - (2) evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies;
  - (3) whether there is a demonstrated need for such license;



# **Licenses – “Public Convenience”**

- (4) effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the premises;
- (5) the existing noise level at the premises and any increase in noise level that would be generated by the proposed premises;
- (6) the history of cannabis violations and reported criminal activity at the proposed premises; and
- (7) any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage of the community

# Deliveries and Drive-thrus

# Deliveries and Drive-thrus

- Retail dispensaries must be a physical brick and mortar store
- Can sell in person, over the internet or via a digital app
- May operate a drive-thru service window or pre-order pick up lanes for individuals using ground transport (aka need a mode of ground transport to pick up) (9 NYCRR 123.10)
  - Dispensary needs prior written approval from OCM and must comply with state and local laws

# Deliveries and Drive-thrus

- Deliveries: what if locality opted out of retail dispensaries and on-site consumption premises – can cannabis still be delivered within that locality?
- Yes! Orders can be delivered to a customer aged 21+ to a physical address
  - All residential properties
  - Short or long-term residences
  - Private businesses
- Delivery **not** authorized to town hall, nor:
  - Public buildings, public spaces (parks etc), community centers, school grounds, daycares, motor vehicles



# Deliveries and Drive-thrus

- All deliveries must be pre-paid online or over the phone at the time the order is made – no cash transactions at delivery!
- ID and signature required at the time of delivery
- Deliveries CANNOT cross state lines – federal CSA makes that a problem
- Dispensaries can charge fee for delivery
- Daily limit: 3 oz (85 grams) of cannabis flower or 24 grams concentrated cannabis (oil, vape, tincture, edibles etc)



EVERYTHING  
IS LEGAL IN  
NEW JERSEY

# Microbusiness Regulations

# Microbusinesses

- As you saw earlier, microbusinesses are on the way to the Tug Hill region!
- Microbusiness license authorizes the cultivation, processing, distribution, retail sale and delivery of the licensee's own cannabis products
- Must engage in cannabis cultivation and at least one additional licensed activity, including processing, distribution, or retail sale
  - Microbusiness must be located within 25 miles of cultivation location in municipalities with populations less than 1,000,000

# Microbusinesses

- Microbusiness license holders may:
  - Cultivate cannabis
  - Operate processing facility to manufacture cannabis
  - Purchase up to 500 lbs cannabis biomass per calendar year
  - Process up to 1700 lbs cannabis biomass
  - Sell cannabis to licensed processor and / or distributor
  - Distribute self-produced cannabis products to retail dispensaries and on-site consumption premises



# Microbusinesses

- Microbusiness license holders may:
  - Deliver microbusiness cannabis products to cannabis consumers
  - Be a Cannabis Event Organizer
  - Sell cannabis products directly to consumers through microbusiness retail premises
- Do distance regulations apply?
  - Depends – is the second factor outside of cultivation retail sale? If so, yes!
- Designed for small, craft producers
- Small and medium-sized entities

# Cannabis as a Crop

# Cannabis / Agriculture

- 2024- confusion as to whether agricultural operations that harvested cannabis entitled to ag exemption
- Chapter 605 of the Laws of 2024 (signed / effective December 21, 2024)
- Cannabis explicitly added to definition of crops, livestock and livestock products



# Cannabis / Agriculture

- Cannabis lawfully cultivated is eligible for agricultural assessment
- Farmers that shift to cannabis do not have to worry about losing ag exemption
- Exemption applies to entire use – will not lose exemption if manufacture on premises too

Revenue!

# Taxation on Cannabis

- MRTA created a 4% local excise tax imposed on adult-use cannabis sales
- 4% tax revenue distributed by OSC to the county in which the retail dispensary is located
- County retains 25% of the revenue (aka 1% of the 4%) and must distribute the remaining 75% to the city, town, and/or village in which the retail dispensary is located
- County must distribute the revenue within 30 days of receipt from the OSC
- If county has more than one retail dispensary, the remaining 75 percent will be shared in proportion to the sales of the adult-use cannabis products

# Taxation on Cannabis

- If a retail dispensary is located in a village within a town, and both local governments allow adult-use cannabis sales, the revenue will be distributed based on a **distribution agreement** between the town and the village
- In the absence of an agreement, the revenue will be distributed evenly between the town and village.
- New Revenue Account Code: A1116 – Tax on Adult-Use Cannabis
- Use this to account for adult-use cannabis tax revenue

# Showcases



# Growers Showcase

- Slow rollout of licensing and sales led to frustration amongst cultivators, producers and retailers sitting with millions of dollars of product
- Solution: **Growers Showcase!**
- OCM's way to help licensed producers to sell cannabis
- Essentially acts as a pop-up dispensary
- Licensee (on-site, retail dispensary, microbusiness or ROD) can participate upon written permission from OCM (9 NYCRR 120.19)
- *Required to show approval from governing body of locality unless locality granted permit (eg, temporary event permit)*
- First one occurred in New Paltz August 2023
- No events occurring after January 1, 2024

# Growers Showcase

- At this time – NO event permits for sale of adult use cannabis products
- All sales of adult use cannabis must happen in approved brick and mortar retail store
- Those wishing to sell authorized CBD products at an event must obtain an Cannabinoid Hemp Temporary Retail Permit from Office of Cannabis Management

# Enforcement Updates

# Enforcement Updates – 2023/24 Budget

## Changes to Tax Law

- . DTF authority to perform regulatory inspections on licensed entities to determine if taxes have been paid
  - May seize cannabis products
- . Increases financial penalties for violations
- . Expands when DTF can revoke or refuse certification of registration required for cannabis businesses

# **Enforcement Updates – 2023/24 Budget**

## **Changes to Tax Law**

- . Establishes new tax fraud crime for willingly failing to collect or remit cannabis taxes or knowingly “possessing for sale”\* any cannabis where taxes should be paid but weren’t

\*Means more than 5lbs adult use cannabis products or 1lb or more of edibles or concentrated cannabis products at a business

# Enforcement Updates – 2023/24 Budget

Changes to Cannabis Law – expands OCM authority

- Civil penalties on unlicensed businesses selling / distributing cannabis
  - Up to \$20k per day for most egregious activity
- Regulatory inspections of businesses selling/giving away cannabis (including in indirect selling\*) and seize product
  - Court order if business refuses or warrant for residence

\*Indirect selling means giving cannabis in connection with the sale of a product or service (sticker sales)

# Enforcement Updates - 2024/2025 Budget

- PPGG Part G
- County OR city (towns and villages were ultimately excluded from final law) may adopt local law establishing process to execute closure orders, seize and destroy illicit cannabis, and establish own civil penalties against the illicit operators

# Enforcement Updates – 2024/2025 Budget

Local law must:

- Establish a local registry of all registered organization, licensees, or permittees in jurisdiction
- Establish civil penalties
- Create a process for adjudicating any hearings required in connection with the issuance of penalties
- Establish a process on how to seize and destroy products
- Designate a local official to be the liaison between the municipality and OCM
  - Must send monthly reports to OCM on enforcement activity



# Enforcement Updates – Case Law

People v Pastrana, 2023 NY Slip Op. 05966

- June 2015 defendant stopped at police roadblock
- Some marihuana in plain view and a “particularly strong” smell came from glove compartment
- Found a lot more weed and a gun
- Defendant convicted of :
  - 2<sup>nd</sup> degree criminal possession of a weapon
  - Criminal possession of marihuana in 5<sup>th</sup> degree
  - Unlawful possession of marihuana
- Wanted MRTA applied retroactively to invalidate search

# Enforcement Updates – Case Law

People v Pastrana, 41 NY3d 23 (2023)

- Penal Law § 222.05 (3) adopted as part of MRTA
- Reasonable cause can't be based solely or collectively on:
  - Odor of cannabis;
  - Odor of burnt cannabis;
  - Possession in authorized amounts;
  - Presence of money near cannabis; or
  - Personal cultivation

# Enforcement Updates – Case Law

Court of Appeals found no intention to have Penal Law 222.05 apply retroactively

- Pointed out Legislature included provisions in MRTA to remedy past discriminatory practices regarding policing of marijuana, including provisions vacating prior marijuana-related convictions
- Aka when Legislature wanted MRTA to impact convictions finalized before law's effective date, it provided express provisions to that effect

# Workplace Updates

# Cannabis in the Workplace

Moran-Ruiz v Ontario County, 218 AD3d 1341 [4th Dept 2023]

- Petitioner was corrections officer for county
- Rx for medical cannabis use in 2018
- Went on disability in 2021
- County saw medical records and cannabis rx
- Petitioner had been cleared to return to work, county wouldn't let her until she had a negative drug test and been evaluated by a substance abuse professional
- Petitioner said violated Civil Service Law §§ 72, 75, and Executive Law 296 and Civil Rights Law § – discriminated based on disability

# Cannabis in the Workplace

- Court affirmed Supreme Court granting county's motions to dismiss
- Regarding Civil Service claims
  - Petitioner member of union. CBA prohibited use of marijuana (even with an Rx), as condition of employment
  - CBA expressly stated that grievance procedure outlined in CBA applied to alleged violations of CBA
  - Therefore, Civil Service Law §§ 72 and 75 didn't apply

# Cannabis in the Workplace

As for discrimination claim:

- Cannabis Law § 42 (2) says being a certified patient for medical marijuana purposes deemed having a ‘disability’ under Executive Law § 296 and Civil Rights Law § 40-c
- Cannabis Law § 127 (4) says “a[n] employer shall adhere to policies regarding cannabis use in accordance with Labor Law 201-d”
- Labor Law 201-d [2][b] says it’s unlawful to fire or discriminate an employee for legally using cannabis during non-work hours
- BUT Labor Law 201-d [4] say “an employer shall not be in violation... where the employer takes action pursuant to a CBA”

# Questions?

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