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Land Use Issues for Legalized Adult-Use Cannabis and Perspectives from Massachusetts

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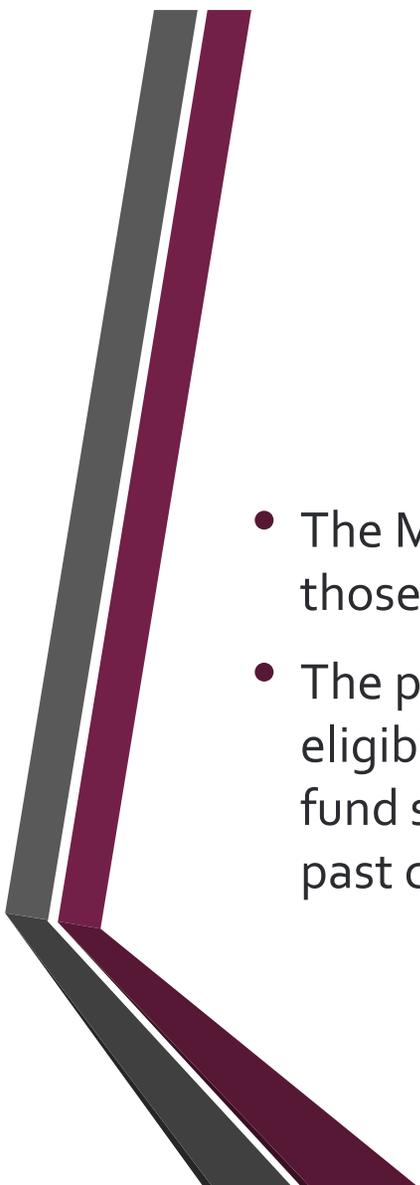
A photograph of several cannabis plants in a grow room. The plants are illuminated by bright, warm-colored grow lights, creating a high-contrast scene. The leaves are green and serrated. A dark rectangular box is overlaid on the center of the image, containing white text.

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.



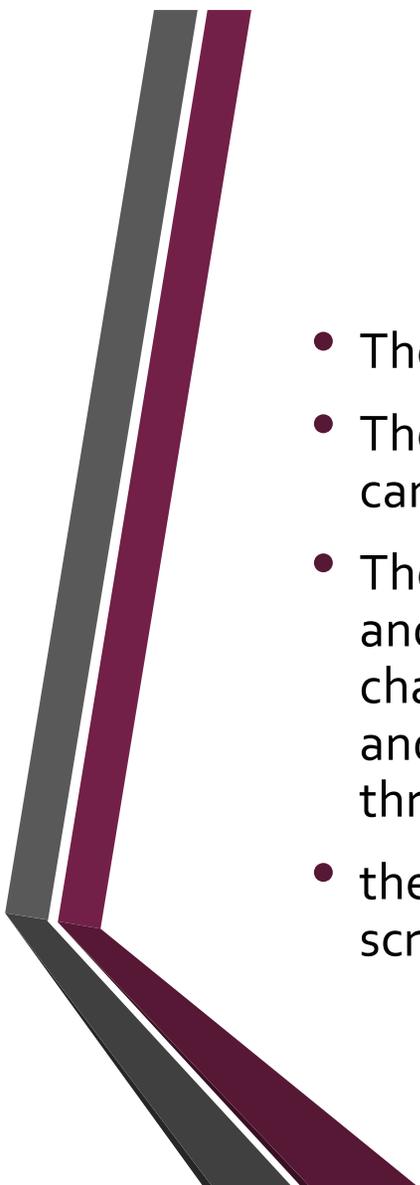
The MRTA Prioritizes Social and Economic Equity

- The MRTA creates a social and economic equity program to encourage those individuals to participate in the adult-use market.
- The primary social equity components of the new law include: expanding eligibility of social equity applicants; creation of a community reinvestment fund supported by cannabis tax revenue; and automatic expungement of past criminal cannabis convictions.



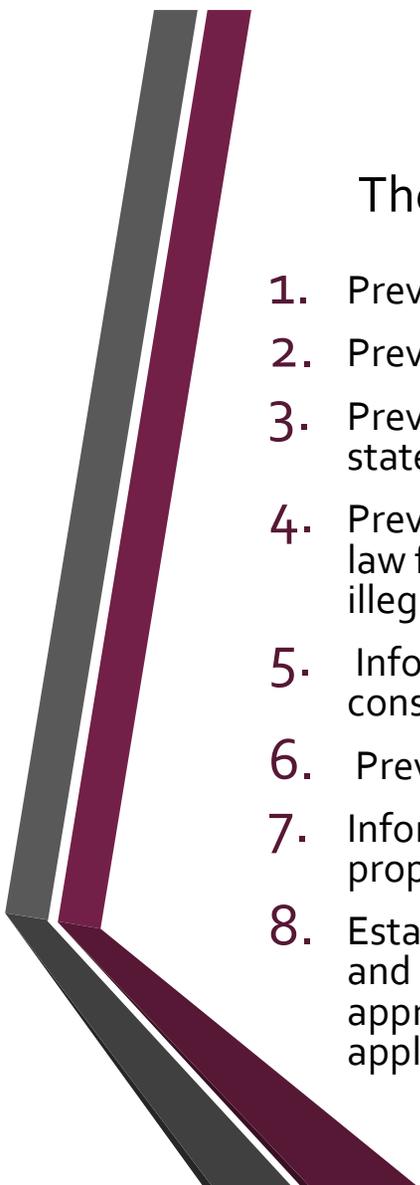
What Does the MRTA not Prohibit?

- Nothing in the MRTA is intended to:
 - Limit the authority of any district, government agency or office or employers to enact and enforce policies pertaining to cannabis in the workplace;
 - Allow driving under the influence of cannabis;
 - Allow individuals to engage in conduct that endangers others;
 - Allow smoking cannabis in any location where smoking tobacco is prohibited; or
 - Require any individual to engage in any conduct that violates federal law or to exempt anyone from any requirement of federal law or pose any obstacle to the federal enforcement of federal law.



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.



The CCB shall promulgate rules and regulations that are designed to:

1. Prevent the distribution of adult-use cannabis or cannabis product to persons under 21;
2. Prevent the revenue from the sale of cannabis from going to criminal enterprises;
3. Prevent the diversion and inversion of cannabis from this state to other states and from other states into this state;
4. Prevent cannabis, hemp, cannabinoid hemp and hemp extract activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Inform the public about the dangers of driving while impaired and the public health consequences associated with the use of cannabis;
6. Prevent the growing of cannabis on public lands;
7. Inform the public about the prohibition on the possession and use of cannabis on federal property; and
8. Establish application, licensing, and permitting processes which ensure all material owners and interest holders are disclosed and that officials or other individuals with control over the approval of an application, permit, or license do not themselves have any interest in an application, license, or permit.



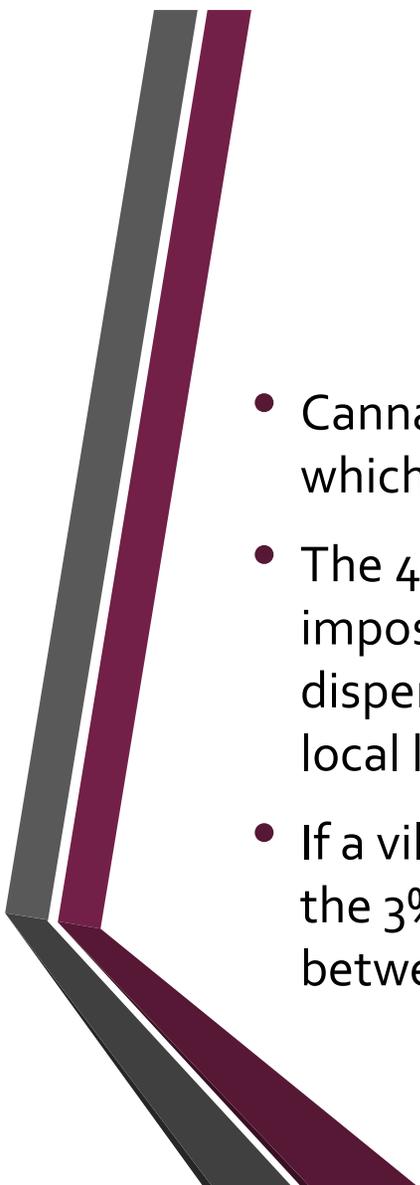
Office of Cannabis Management (OCM)

- 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.



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.



Tax Revenue 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. (1% goes to the County, and 3% is divided at the local level based on retail sales).
- If a village and town both opt in and the retailer is located in the village, then the 3% is split between the town and revenue either per an agreement between the two or is otherwise split 50-50.

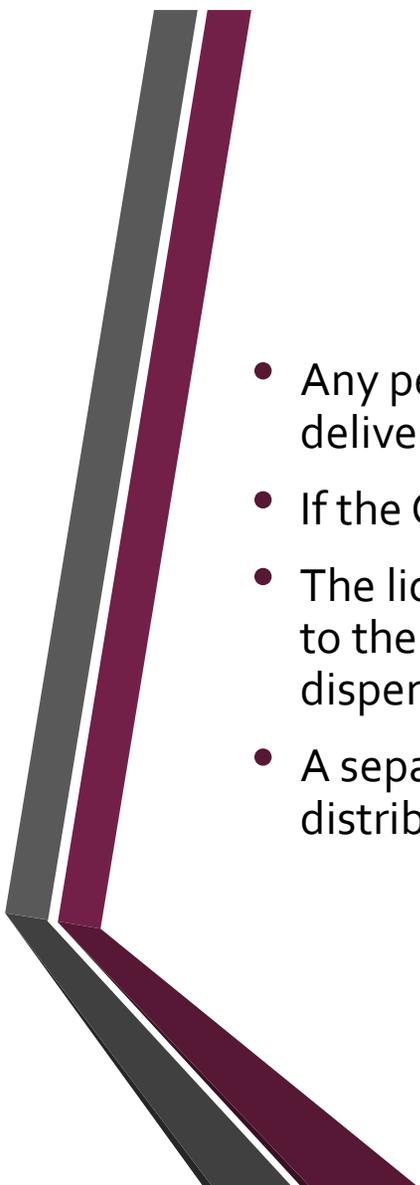
A photograph of marijuana products. In the upper right, a clear glass jar is tipped, spilling green, trichome-covered cannabis buds. In the lower left, three white paper-wrapped joints are laid out. In the center-left, a small black jar is filled with finely ground green cannabis. The background is a dark, textured surface with scattered green buds and ground weed.

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

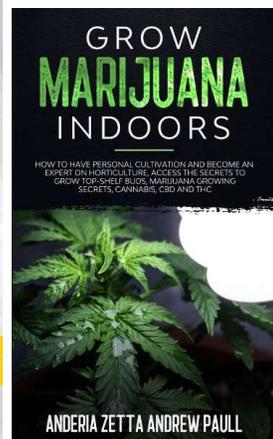
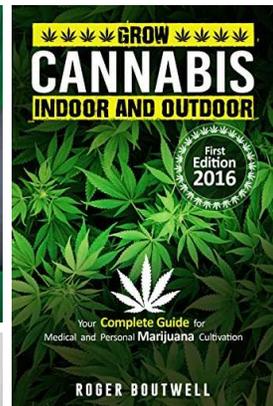
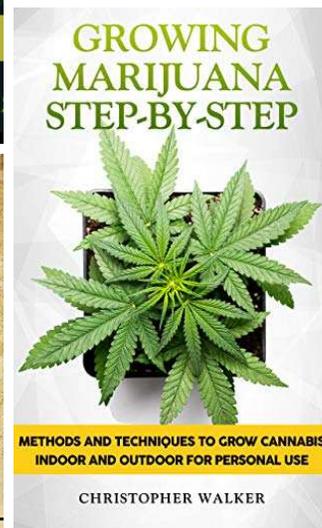
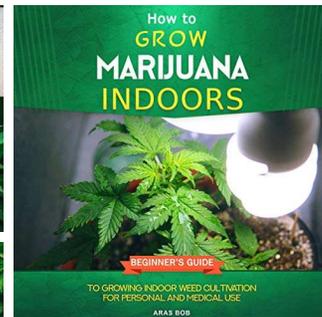
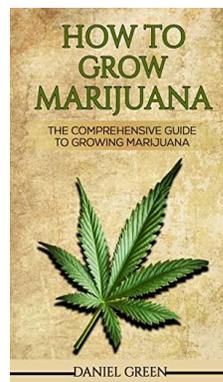
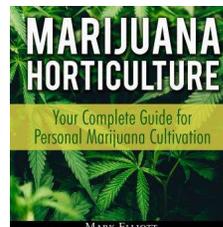
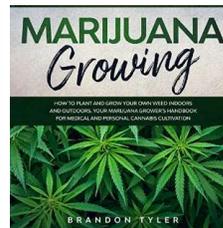
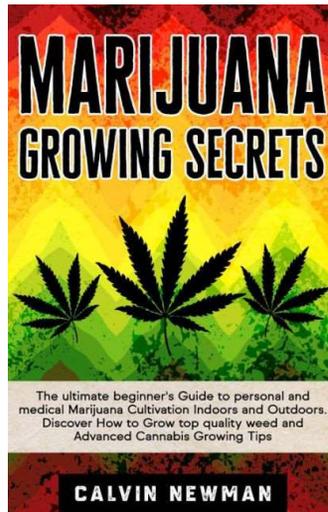
- Any person may apply to the CCB for a license to cultivate, process, distribute, deliver or dispense cannabis within NYS for sale.
- If the CCB approves the application, it shall issue a license.
- The license will contain a description of the licensed premises and shall be a license to the person 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.

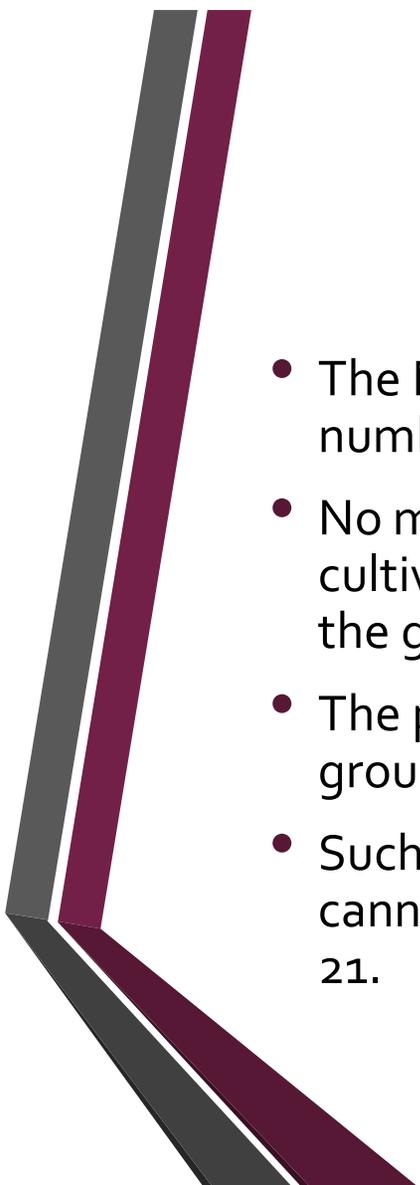


Notification to Municipalities of Adult-use Retail Dispensary or On-site Consumption License.

- 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.

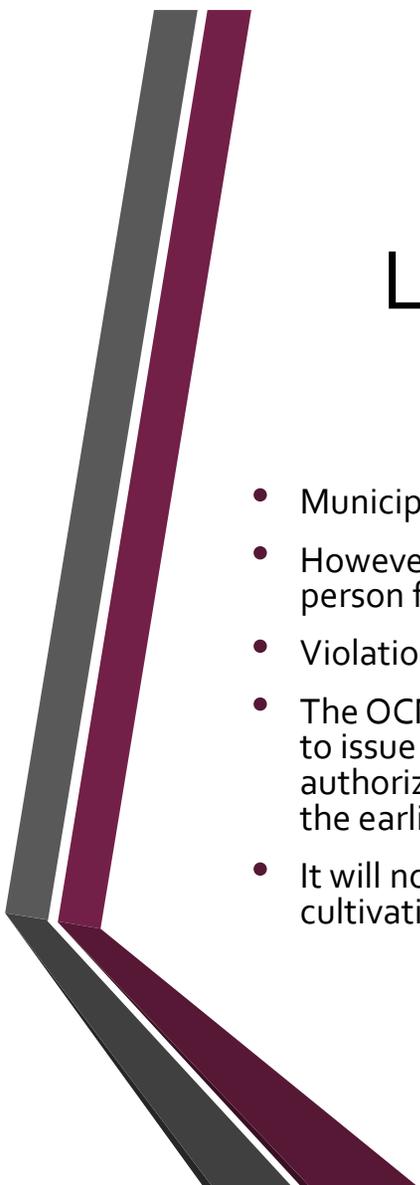
Personal Cultivation





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.



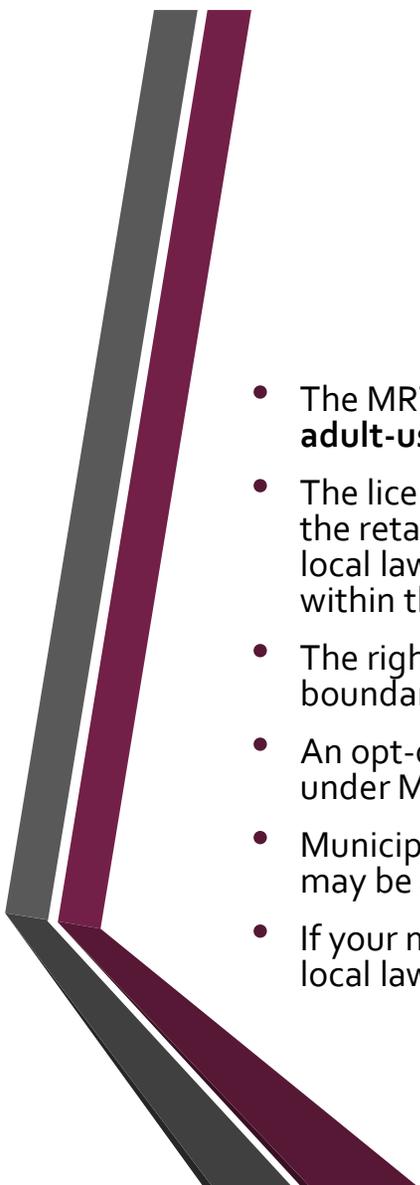
OPT OUT



OPT IN

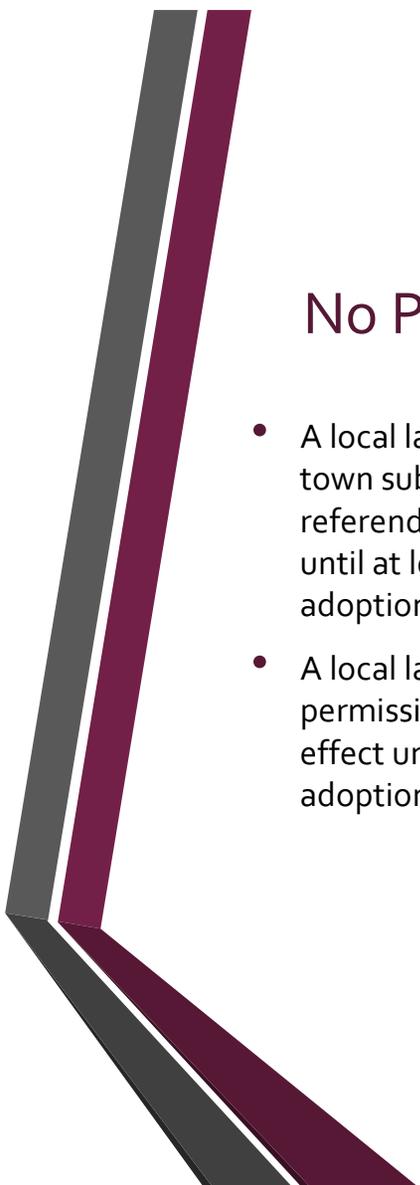


Municipal Opt-Out Authorization



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.



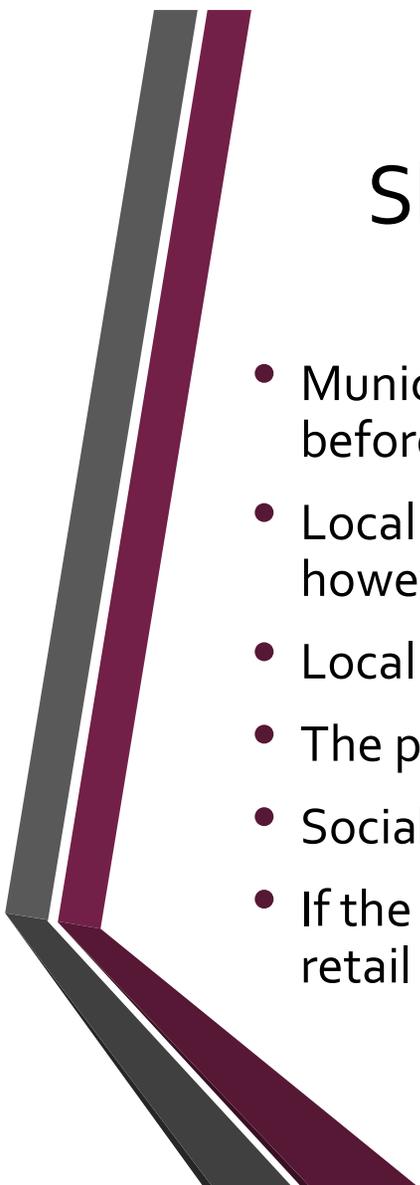
Permissive Referendum

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.



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.