

Recreational Marijuana Implications for Planning and Zoning in NYS

October 27, 2022

massCBA

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Regulating Cannabis Businesses

- Types of Regulation

- a. NYS Cannabis Law
- b. Traditional Local Regulation, Including Zoning

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Regulating Cannabis Businesses

- Does NYCOM Have a Sample Local Law Regulating Cannabis Businesses?

No

**Local Zoning Regulations All Vary
There's No Sample/Model Local
Cannabis Business Regulation**

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MRTA

- Enacts Chapter 7-A, Cannabis Law
- Substantially Amends Numerous Other Provisions of State Law to Implement Adult-Use Cannabis

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MRTA

- Establishes Two New State Agencies
 1. Cannabis Control Board
 2. Office of Cannabis Management
- CCB Has Promulgated Some Rules
- CCB STILL Needs to Promulgate More Rules



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/Early 2023** at the Earliest



MRTA

- Individuals & Organizations Must Obtain a License Before

Engaging In <ol style="list-style-type: none"> a. Cultivating, b. Processing, c. Distributing, d. Delivering, e. Dispensing Cannabis, or 	Operating a <ol style="list-style-type: none"> a. Cooperative, b. Microbusiness, c. Nursery, or d. On-Site Consumption Establishment
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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



Some State Standards

- Retail Dispensaries/On-Site Consumption Establishments
 - 500 Feet from School Grounds
 - 200 Feet from House of Worship

Same as Applies to Alcohol Sales



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

▪ State Preemption

- Does **NOT** Mean Cannabis Businesses Can Locate Wherever They Want



Summary of Local Regulation

Type of Regulation	Description
Local Opt-Out	Applies to Retail Dispensaries and/or On-Site Consumption Establishments Only
Local Land Use Regulations of Retail Dispensaries & On-Site Consumption Establishments	Time, Place & Manner Regulations of Retail Dispensaries and/or On-Site Consumption Sites , that Do Not Make Their Operation Unreasonably Impracticable as Determined by the CCB
Local Land Use Regulations of All Other Licensees	Traditional Zoning/Land Use Regulations
Public Consumption of Cannabis	May Enact Regulations Above and Beyond the Clean Air Act



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**



Local Regulation

Time, Place, & Manner Restrictions

- Alaska Stat. Ann. § 17.38.210
- 410 Ill. Comp. Stat. Ann. 705/55-25
- Mass. Gen. Laws Ann. ch. 94G, § 3



Local Regulation

Zoning & Time, Place & Manner

- Valley Green Grow, Inc. v. Town of Charlton, 99 Mass. App. Ct. 670 (2021)
- Town Planning Board Concluded That Proposed Marijuana Establishment Constitutes "Light Manufacturing" & Was Therefore Not a Use Allowed in Agricultural & Commercial Business Districts



Local Regulation

▪ Zoning & Time, Place & Manner

- Trial Court Judge Concluded & Declared That Proposed Use Is "An Indoor Commercial **Horticulture/Floriculture Establishment** (e.g. **Greenhouse**) Use Allowed By Right" in Agricultural & Commercial Business Districts



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- Judge Found Cannabis Would Be Grown Hydroponically Without Chemical Pesticides in Closed Greenhouses That Would Carefully Maintain Environmental Conditions, Filter Air Contaminants, & Mitigate Odors, Postharvest Processing Would Include Separating Cannabis Plant



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- "[B]ased on the Accepted Definitions And the Language of G. L. C. 61A, §§ 1-2, And G. L. C. 128, § 1A, the Growth or Cultivation of Marijuana Is, Within the Plain Meaning of the Word[s], An Agricultural Use"



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- Postharvest Processing Activities (13% of Site) **Accessory Use** Likened to "A Farmer Making Cider, Cheese, Ice Cream, Butter, or Maple Syrup" From Products Grown on Site



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- **"Because the Town Did Not Enact Any Ordinances Placing Reasonable Time, Place, or Manner Restrictions** on Marijuana Establishments Prior to the Time That VGG And the Owners Submitted Their Preliminary Subdivision Plan And Thereby Froze the Zoning, the Judge Reasonably Looked to the Zoning Bylaw as It Existed When the Preliminary Plan Was Submitted to Determine Whether VGG's Proposed Use Was Permitted as of Right. the Question For the Judge (And the Question Addressed By the Planning Board), Therefore, Was Whether the Project Met the Definition of Agriculture or Horticulture in the Town's Bylaw."



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- Planning Board Argued That Proposal Was Light Manufacturing Because of
 - a. Facility Size,
 - b. Number of Employees,
 - c. Number of Truck Trips Per Day,
 - d. Facilities Overall Trip Generation,
 - e. Water Consumption
 - f. Potential for Industrial-Level Noise,
 - g. Need for Sophisticated HVAC & Odor Mitigation Controls, &
 - h. Large Cogeneration Facility



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- Court:
 - Planning Board Failed to Explain How These Factors Rendered Use Light Manufacturing, Rather Than Commercial Horticulture
 - Board Essentially Ignores That Overwhelming Majority of Property Will Be Used For Growing Marijuana



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

Local Regulation

▪ Zoning & Time, Place & Manner

- Court:
 - Local Land Use Regulations Expressly Allow Indoor Commercial Horticultural Uses & Contains No Limit on the Size of An Allowed Commercial Greenhouse or Accessory Structures



Valley Green Grow, Inc. v. Town of Charlton,
99 Mass. App. Ct. 670 (2021)

First 150 (or so) Dispensaries

▪ Conditional Adult-Use Retail Dispensaries

- CCB Proposed Regulations Published On March 30, 2022
- CAURD Regulations Approved this Past Summer
- CAURD License Application Were Due September
- <https://cannabis.ny.gov/caurd-faq>



First 150 (or so) Dispensaries

▪ DASNY - Turnkey Operations

- DASNY Is Currently In the Process of Identifying Locations Where Conditional Adult-Use Retail Dispensary Licensees Could Operate
- Turnkey Sites Offered to First CAURD Licensees
- First Licenses Will Be Issued & Conditional Adult-Use Retail Dispensaries Will Begin Sales **By the End of 2022 or Maybe 2023**



First 150 (or so) Dispensaries

Name of Region	Commuter Adjusted Population	Population Distribution	Max. Number of Qualifying Business CAURD Licenses
Brooklyn	2,852,632	12.3%	19
Capital Region	1,145,370	5.0%	7
Central New York	1,093,219	4.7%	7
Finger Lakes	1,383,303	6.0%	9
Long Island	3,110,067	13.4%	20
Manhattan	3,375,059	14.6%	22
Mid-Hudson	2,603,489	11.3%	17
Mohawk Valley	281,983	1.2%	2
North Country	586,426	2.5%	4
Queens	2,525,120	10.9%	16
Southern Tier	480,753	2.1%	3
Staten Island	500,926	2.2%	3
The Bronx	1,565,988	6.8%	10
Western New York	1,622,461	7.0%	11



CCB Regulations

▪ Full Regulations

- Full Draft Regulations Expected to be Published ~~July (Maybe August)~~ October (Maybe) 2022
- Then 60 Day Comment Period
- Finalized Regulations Late 2022/Early 2023



New York State Conference of Mayors and Municipal Officials

MRTA

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Local Regulation

▪ **Zoning**

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Local Regulation

▪ **Recommended Zoning Regulations**

- **No! NYCOM Does NOT Have Sample Zoning Regulations**
- Update Your Zoning to Clarify Your Uses & Where Cannabis Operations Fit Into Those Uses
- Don't Treat Cannabis Operations Different from Other Types of Similar Operations

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Local Regulation

▪ Recommended Zoning Regulations

Cannabis Use	Non-Cannabis Use
Cultivators	Greenhouse, Horticultural
Processors	Processors
Distributors	Distributors
Dispensaries	Retail Establishment (Liquor Store)
Nursery	Nursery
On-Site Consumption Establishment	Bar

Local Regulations

▪ Special Use Permits

- **Can You** Use SUPs for Cannabis Uses?
- **Will You** Be Able to Use SUPs for Cannabis Uses?
- **Should You** Use SUPs for Cannabis Uses?

Local Regulations

▪ The Transition

- **Several Years, Until Number of Dispensaries Meets Demand**
- **First Dispensaries = Huge Demand,** Limited Supply
 - Traffic
 - Parking
 - Pedestrian Lines

Notification to Municipalities

- Prior to Submitting an Application to CCB, 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

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



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



Public Consumption

▪ Public Health Law Article 13-E

- Prohibits Smoking & Vaping In

- | | |
|-------------------------------------|--|
| a. Places of Employment; | e. Youth/Children Facilities; |
| b. Bars; | f. Public & Private Colleges, Universities & Other Educational Institutions, |
| c. Restaurants; | g. Hospitals & Residential Health Care Facilities; |
| d. Public Mass Transportation; | h. Indoor Arenas; & |
| e. Public Transportation Terminals; | i. MORE |



Public Consumption

▪ Penal Law § 222.10

- Individuals May Not Smoke or Vape Cannabis

- On School Grounds,
- 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
- 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



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



Still A Lot To Be Determined

Questions?

