

Overview

In March 2021 the Marijuana Regulation and Taxation Act (MRTA) was adopted. It creates an entirely new area of law, creates state offices, establishes a licensing system and comprehensively regulates different aspects of medical and adult use cannabis and hemp.

There will be no one size fits all approach in deciding whether allowing recreational marijuana sales is the right choice for your community. For one town, the allure of job creation and tax revenue may outweigh any ancillary concerns of law enforcement, traffic, code enforcement or security concerns. For yet another town the opposite may be true.

This document focuses on information that is most relevant to towns.

The State Structure

Cannabis Control Board (The Board)

Its primary responsibility is to issue or deny applications for any of the various licenses listed in the MRTA, including licenses for adult-use dispensaries.

Office of Cannabis Management (OCM)

The office is established within the Division of Alcoholic Beverage Control. Cannabis Control Board will make registration, license and permit application determinations after receiving a recommendation and relevant application information from OCM.

State Cannabis Advisory Board (CAB)

The CAB is in charge of collaborating with OCM and The Board and to issue various recommendations. The CAB is also responsible for administering Community Grants Investment Funds

Medical Cannabis

To qualify for medical cannabis usage the person first has to be certified by a qualified practitioner. Once certified, patients or their caregivers must apply for a registry identification card, which must be presented when picking up medical cannabis.

Registered Organizations (aka Medical Cannabis Dispensaries)

Entities that want to sell, deliver, transport, distribute, or dispense medical cannabis must apply to become a registered organization. Such organizations may also hold adult use licenses, meaning that the same place will be able to distribute medical cannabis and sell recreational cannabis if it has both licenses.

Adult Use Cannabis Licensing

Article 4 of the law regulates each step in the process from growing to processing to distributing to consumer sales. Each step has its own separate license. There are 10 different types of licenses. The focus here is on retail dispensary and on site consumption licenses because those are the two over which towns have some authority.

Applying for an Adult Use License

The Cannabis Control Board (CCB) will establish regulations on what information needs to be included in applications for adult use licenses, including financial information, evidence of good moral character and a submission of fingerprints. Licenses are good for two years and may be renewed.

Retail Dispensary/On-Site Consumption Licenses

An applicant for an Adult-Use retail dispensary license or an on-site consumption license must notify a municipality of its intention to file an application between 270 days and 30 days before it plans on filing.

If a municipality submits an opinion to the CCB for or against granting a license, that opinion will be considered a part of the official record of the application, and the Board (CCB) must respond to the municipality explaining how the opinion was considered in granting or denying the application.

Local Law Opting Out

Municipalities have the ability to adopt local laws opting out of allowing retail dispensaries and on-site consumption sites. The local law must be adopted by December 31, 2021

The opt-out local law is subject to a permissive referendum. This means that if a Town adopts a local law opting out, and there is a petition with a sufficient number of qualifying signatures, then the Town would have to put the local law to a vote.

Municipalities can only opt out of retail dispensaries and on site consumption, nothing else.

The Association of Towns recommends holding public hearings or community round tables to get a sense of what the community wants.

While the deadline to opt out is December 31, 2021, the Town Board may in the future rescind that local law in order to opt back in.

For example, let's say The Town adopts a local law opting out in October 2021 and in two years' time the Town Board rescinds that local law in October 2023 in order to opt back in. If the Town Board, in the future, wants to opt out again, it would not be allowed to because you can only opt by December 31, 2021.

Local Restrictions on Retail Dispensaries and On-site Consumption Establishments

If a town decides to allow retail dispensaries and on site consumption sites it may adopt local laws regulating the time, place and manner of those establishments so long as it does not make the operation of them unreasonably impractical.

Tax/Revenue Sharing with Towns

There is the potential for a town to gain some revenue from legalized adult use cannabis. There are two different levels of taxes on sales to consumers – one is a 9 percent tax that will go to the state and the other is a 4 percent tax that is distributed on a quarterly basis as follows: from the 4 percent, 25 percent will stay with the county, the remaining 75 percent will be distributed among towns, cities and villages in the county in proportion to the amount of sales that take place within their jurisdictions.

Personal Cultivation

The MRTA allows for personal cultivation at private residences for those aged 21 or over who require medical use of cannabis 6 months after the MRTA was adopted; that date would be September 30, 2021. MRTA provides a longer delay for growing cannabis for strictly recreational use. The authority to grow recreational cannabis for those aged 21 or over does not kick in until 18 months after the opening of the first adult-use dispensaries. This could be as late as 2024.

Once personal or medical cultivation is allowed, an individual may have three mature and three immature plants in their private residence and each residence cannot exceed a total of six mature and six immature plants. The law gives counties, cities, Towns and villages the authority to reasonably regulate home cultivation; however, any rules cannot completely or in practice prohibit home cultivation.

Possession

Under MRTA a person 21 or older can possess, display, transport, or obtain up to 3 ounces of cannabis or 24 grams of concentrated cannabis. Additionally, a person may lawfully possess 5 pounds of cannabis in their personal residence.

Public Smoking and Consumption

With respect to smoking and vaping, cannabis is treated the same as tobacco. Public Health Law prohibits smoking or vaping cannabis in certain indoor areas such as, but not limited to, places of employment, bars, public transportation, and child care centers.

Cars, however are a notable exception when tobacco can be smoked or vaped but not cannabis.

Local governments may impose their own smoking and vaping restrictions for property owned or controlled by the municipality, including parks and playgrounds.

Social Equity Issues

Social equity is one of the MRTA's primary goals. To that end, the board, in consultations with the chief equity officer and executive director of OCM, after receiving public input, will develop and implement a social and economic equity plan and actively promote and encourage applicants from communities that have disproportionately been impacted by the former prohibition of cannabis. The legislation specifically states that a goal is to have 50 percent of adult-use licenses go to social and economic applicants from these disproportionately impacted groups.