

VILLAGE OF PITTSFORD

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Village Hall ca 1855 (remodeled 1937)

Village of Pittsford Board of Trustees Workshop Meeting August 2, 2021, 6:30 PM

Tentative Agenda

Board Member - Conflict of Interest Disclosure & Open Meeting Compliance Certification

Meeting Items

- Tavern Overlay District
- Outside Seating
- Marijuana Legalization
- NYCOM Conference

Next Scheduled Meeting –Regular Meeting August 10, 2021

*Subject to Change Without Notice

Village Board Meeting

Meeting Items

Agenda Item

Tavern Overlay District

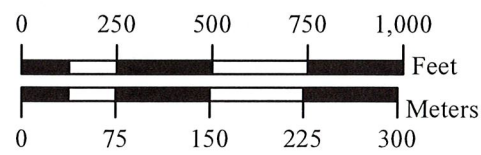


ZONING DISTRICT MAP

Village of Pittsford

Monroe County, New York

- Low Density Residential (LDR)
- Medium Density Residential (MDR)
- Residential (R-5)
- Limited Office Residential (LOR)
- Village Gateway Business (VGB)
- Village Center Business (VCB)
- Traditional Downtown Design (TDD)
- Mixed Use Office (MU-OF)
- Mixed Use Erie Canal (MU-EC)
- Open Space (OS)
- Local Waterfront Overlay (LWO)
- Tavern Overlay (TO)
- Pittsford Village Historic (H) and Village Boundary
- National Register Pittsford Village Historic District
- School
- Real Property Parcel
- State Road
- County Road
- Local Road
- Private Road
- Railroad
- Water

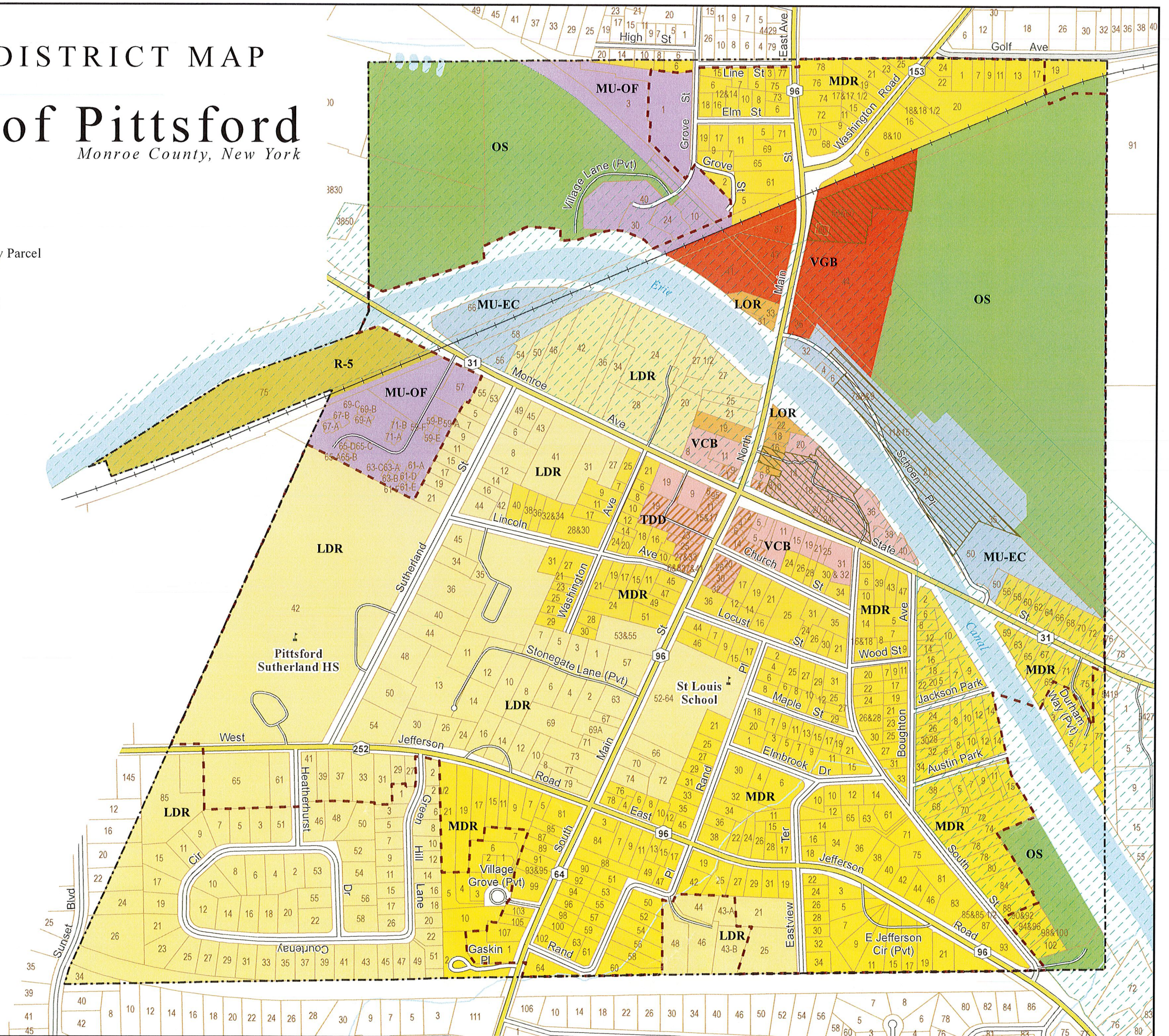


1 inch = 500 feet
Intended print size: 11"H x 17"W



Data Sources:
 Village of Pittsford, November 2019
 NYS Office of Parks, Recreation & Historic Preservation, October 2018
 Town of Pittsford GIS, May 2021
 Monroe County Real Property Tax Service, January 2021
 U.S. Geological Survey, February 2019

The information depicted on this map is representational and should be used for general reference purposes only. No warranties, expressed or implied, are provided for the data or its use or interpretation.



Village Board Meeting

Meeting Items
Agenda Item

Outside Seating

Village Board Meeting

Meeting Items

Agenda Item

Marijuana Legalization



New York’s Marihuana Regulation and Taxation Act: The Legalization of Adult-Use Cannabis in New York

By Wade Beltramo, NYCOM General Counsel

[Overview](#)

On March 31, 2021, Governor Cuomo signed into law Chapter 92 of the Laws of 2021. Known as “the marihuana regulation and taxation act” (MRTA), this legislation was enacted with the stated purpose of creating a regulated and taxed cannabis industry in New York and to provide for social and economic justice related to the sale and use of cannabis. While the MRTA legalizes the possession and use of cannabis immediately, the actual sale of adult-use cannabis is not expected to begin until late 2022 or early 2023.

The MRTA enacts an entirely new chapter of the New York State Laws (Chapter 7-A, Cannabis Law) and substantially amends numerous other provisions of State law to provide for the implementation of adult-use cannabis. In addition, the MRTA establishes two new State agencies called the New York State Cannabis Control Board and the Office of Cannabis Management, which will administer the State’s adult-use and medical use programs, promulgating rules, issuing licenses, and investigating and enforcing infractions of the law. The regulatory framework created by the MRTA is in many ways similar to how the State currently regulates alcohol via the Alcoholic Beverage Control Law and the New York State Liquor Authority.

The MRTA creates a heavily regulated market requiring individuals and organizations to obtain a license before engaging in any of the myriad types of authorized cannabis businesses, including cultivating, processing, distributing, delivering, dispensing cannabis, or operating a cooperative, microbusiness, nursery, or on-site consumption establishment.

[Legalization of Cannabis Use](#)

The MRTA amends the NYS Penal Law, adding Article 222 Cannabis, which sets forth both legal and illegal activities regarding adult-use cannabis. Penal Law § 222.05 expressly states that any individual 21 or older may:

- (a) possess, display, purchase, obtain, or transport up to 3 ounces of cannabis and up to 24 grams of concentrated cannabis
- (b) transfer, without compensation, to another person 21 or older, up to 3 ounces of cannabis and up to 24 grams of concentrated cannabis;

- (c) use, smoke, ingest, or consume cannabis or concentrated cannabis unless otherwise prohibited by state law;
- (d) possess, use, display, purchase, obtain, manufacture, transport or give to any person 21 or older cannabis paraphernalia or concentrated cannabis paraphernalia;
- (e) plant, cultivate, harvest, dry, process or possess cultivated cannabis in accordance with Penal Law § 222.15; and
- (f) (i) assist another person who is 21 or older or (ii) allow property to be used in any of the acts described in the preceding paragraphs.

In addition, cannabis, concentrated cannabis, cannabis paraphernalia or concentrated cannabis paraphernalia involved in any lawful conduct under Penal Law § 222.05 are not contraband nor subject to seizure or forfeiture of assets. Moreover, conduct deemed lawful by Penal Law §222.05 may not be the basis for law enforcement approaching, searching, seizing, arresting or detaining an individual. These provisions of law took effect March 31, 2021.

Local Opt-Out of Retail Sales

General Provisions

Cities, villages, and towns may opt out of allowing retail dispensaries and/or on-site consumption establishments from locating and operating within their boundaries. To effectuate the opt-out, such local governments must adopt a local law subject to a permissive referendum on or before December 31, 2021. A town opt-out only applies to the area of the town outside of any village(s) located therein. No city, village, or town may opt out after December 31, 2021. However, a local government that, in 2021, opts out of allowing retail dispensaries and/or on-site consumption establishments from locating within their boundaries may repeal such opt-out at any time. The local government opt-out does not apply to other types of licensed activities under the Cannabis Law.

Conducting the Permissive Referendum in Cities

The Municipal Home Rule Law sets forth the process and procedures required to conduct mandatory and permissive referenda in cities. Failure to follow the procedure required by law for conducting a referendum may result in the city council's action being invalidated.¹

Any local law adopted by a city that is subject to permissive referendum will not take effect until:

1. 45 days after its adoption have passed; and
2. It is approved by the electors of the city, if a petition is filed requiring the law be approved by a majority vote of the electorate.²

Petitions must be made on separate sheets of paper and the signatures on each sheet must be signed and authenticated in the manner provided by the Election Law for the signing and authorizing of nominating petitions.³ These sheets, when fastened together and offered for filing, are deemed to constitute one petition.

Petitions must be filed in the city clerk's office within 45 days of the adoption of the local law. Petitions must be signed by a number of electors equal to 10% of the total number of votes cast in the city for governor at the last gubernatorial election.⁴ All signers of the petition must be qualified voters.⁵ A qualified voter is an individual who is currently registered to vote and was also registered during the previous general election.⁶

If a petition is filed, a proposition on the local law must be submitted to the voters at the next election of State or local government, not less than 60 days after the filing of the petition. The petition may also request that the city council direct a special election be held.⁷

Once the petition has been filed with the city clerk, he or she must examine it not later than 30 days after the date of filing, or 45 days before the date of the election where the referendum would appear on the ballot, whichever is earlier. The clerk then transmits a certificate to the city council attesting that he or she has examined the petition and stating whether the petition complies with the law's requirements.⁸

If within five days after the last day to file a certificate to the legislative body, a written objection to the clerk's certification is filed in the State Supreme Court in the county in which the city is located, the court must determine any question arising from the petition and issue an order. This proceeding must be heard and determined in the manner prescribed in Election Law § 16-116.

Conducting the Permissive Referendum in Villages

A local law adopted by a village that is subject to a permissive referendum under Municipal Home Rule Law § 24, or any other State statute, will be conducted pursuant to **Article 9 of the Village Law**.⁹ Under Article 9, a village board of trustees may bypass the petition process by submitting a permissive referendum to voters upon its own motion.¹⁰ Compliance with Article 9 is therefore consistent with the terms of the Municipal Home Rule Law. Additionally, Village Law § 9-900(1) states that whenever the Village Law provides that an act or resolution of the board of trustees is subject to a permissive referendum, the permissive referendum must be conducted as provided in Article 9.

Many referenda may be timed so that they are held during a regularly scheduled village election. The criteria for determining when a referendum is to be held is set forth in Village Law § 9-902. If the petition for a permissive referendum is filed after the first day of the month in which a general village election is to be held and before the first day of the month two months prior to the next general village election, the referendum must be held at a special election of the village to be held not less than 10, nor more than 60, days after the filing of the petition.¹¹

Within 10 days after the board of trustees adopts any local law or resolution that is subject to a permissive referendum, the village clerk must post and publish, in the same manner as provided for the notice of a general village election, a notice setting forth the date that the local law or resolution was adopted.¹² The notice must also contain an abstract of the local law or resolution stating its purpose and indicating that the local law or resolution is subject to a permissive referendum. If more than one referendum is to be voted upon, each must be separately and consecutively numbered.¹³

The purpose of this notice is to afford the electorate the opportunity to circulate a petition on the question. If the local law or resolution is subject to a mandatory referendum, this notice is not required.

For a vote to be held on a local law or resolution that is subject to a permissive referendum, a valid petition must be filed in the office of the village clerk within 30 days of the passage of the legislative act. If no petition is filed within the 30 days, the local law or resolution goes into effect by operation of law.¹⁴

The petition must be signed by a number of village electors equal to at least 20% of the electors of the village, as shown on the register of electors for the previous general village election.¹⁵ It must be noted that the percentage requirement is 20% of residents registered to vote, and not 20% of residents who actually voted.

If an act is subject to a permissive referendum, the board of trustees may, upon its own motion, submit the act to a referendum, eliminating the need for a petition.¹⁶ This is an alternative to the citizen-initiated petition process and expedites the vote by eliminating the petition’s “waiting period.” The remainder of the process would be the same as if a petition had been filed on the date that the board submits the act to the referendum.¹⁷

For information on the process and procedure of conducting permissive referenda, see NYCOM’s publication [Enacting Local Legislation and Conducting Referenda](#), available for download from the member’s section at www.nycom.org. A sample local law opting out of hosting retain cannabis dispensaries and/or on-site cannabis consumption establishments can be found at the end of this document.

State Preemption & Local Time, Place, and Manner Restrictions

Counties, cities, villages, and 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. Cities, villages, and towns may nonetheless pass local laws and regulations governing the time, place and manner of the operation of licensed adult-use cannabis retail dispensaries and/or on-site consumption site, provided such laws or regulations do not make the operation of such licensed retail dispensaries or on-site consumption sites unreasonably impracticable as determined by the Cannabis Board. All adult-use licensees must comply with local zoning regulations.

Notwithstanding any local regulations, retail dispensary signage is prohibited except as authorized by the Cannabis Control Board. In addition, neither retail dispensaries nor on-site consumption establishments may be located within 500 feet of school grounds as such term is defined in the NYS Education Law or within 200 feet of a house of worship.

Notification to Location Governments of License Applications

Pursuant to Cannabis Law § 76, cultivators, processors, distributors, retail dispensaries, and on-site consumption license applicants must notify the municipality in which the applicant’s premises is located of their intent to file an application for that location. The notice must be filed with the municipal clerk not less than 30 days nor more than 270 days before filing the license application with the State. The notification must be made in the form prescribed by Cannabis Control Board. If a local government expresses an opinion for or against the granting of the registration, license or permit application, that opinion will be deemed part of the record upon which the Office of Cannabis Management makes its licensure recommendation to the Cannabis Control Board to grant or deny the application. The Cannabis Control Board must respond in writing to the municipality with an explanation of how such opinion was considered in granting or denying the application.

License applicants must notify the municipality by: (a) certified mail, return receipt requested; (b) overnight delivery service with proof of mailing; or (c) personal service upon the offices of the clerk or community board.

The form of the notification will include

- a) the trade name or “doing business as” name, if any, of the establishment;
- b) the full name of the applicant;
- c) the street address of the establishment, including the floor location or room number, if applicable;
- d) the mailing address of the establishment, if different than the street address;
- e) the name, address and telephone number of the attorney or representative of the applicant, if any;
- f) a statement indicating whether the application is for:
 - i. a new establishment;

- ii. a transfer of an existing licensed business;
- iii. a renewal of an existing license; or
- iv. an alteration of an existing licensed premises;
- g) if the establishment is a transfer or previously licensed premises, the name of the old establishment and such establishment's registration or license number;
- h) in the case of a renewal or alteration application, the registration or license number of the applicant; and
- i) the type of license being applied for.

Police Right to Inspect Licensed Operations

Pursuant to Cannabis Law § 79, peace and police officers will be able to inspect all licensed or permitted premises and all records of licensed operators. Such inspections may only be done in a manner so as not to interrupt ordinary business and not to compromise the licensees' safety and security procedures. Such inspections may include, but are not limited to, ensuring the licensee or permittee is complying with the NYS Cannabis Law, the regulations promulgated pursuant thereto, and other applicable State and local building codes, fire, health, safety, and other applicable regulations.

Local Revenues from Cannabis Sales

The MRTA adds a new Article 20-C to the New York State Tax Law, entitled Tax on Adult-Use Cannabis Products. Article 20-C imposes multiple State taxes on both the distribution and the retail sale of adult-use cannabis. In addition, Tax Law § 493(c) imposes a 4% local tax on the retail sale of adult-use cannabis which will be distributed to the county and the city, village, or town in which the sale occurs. Thus, if a city, village, or town has opted out of allowing retail cannabis dispensaries and on-site cannabis consumption establishments to locate within their boundaries, that municipality will not receive any revenue from the local cannabis sales tax.

The New York State Comptroller will distribute taxes collected pursuant to Tax Law § 493(c) to counties in which adult-use cannabis retail sales occur. The counties are entitled to retain 25% of the monies distributed by the Comptroller. The counties must distribute the remaining 75% of the monies to the cities, villages, and towns within the county in proportion to the sales of adult-use cannabis products by the retail dispensaries in such cities, villages, and towns.

If a retail dispensary is located in a village within a town that also permits cannabis retail sales, then the county must distribute the monies attributable to such retail dispensary to the town and village as agreed upon by the governing bodies of those local governments. In the absence of such an agreement, the county must evenly divide the monies between the town and village. The moneys will be distributed on a quarterly basis.

There are no restrictions placed on how the local governments may use these local revenues.

Programs Financed by the State

The MRTA establishes several funds consisting of revenues collected by the State pursuant to Article 20-C of the NYS Tax Law to finance myriad programs related to the legalization of cannabis. The New York State Cannabis Revenue Fund (Tax Law § 99-ii) will be used for Office of Cannabis Management and Cannabis Control Board operations, funding cannabis equity programs, researching the impacts of cannabis legalization, funding State Police and the Department of Motor Vehicles implementation of the MRTA (including expanding and enhancing the drug recognition expert training program and technologies utilized in the process of maintaining road safety), schools, and drug treatment and public education programs. The New York State

Drug Treatment and Public Education Fund (Tax Law § 99-jj) will be used by the Office of Addiction Services and Supports to develop and implement a youth-focused public health education and prevention campaign and a statewide public health campaign focused on the health effects of cannabis and legal use, and to provide substance use disorder treatment programs for youth and adults. The New York State Community Grants Reinvestment Fund (Tax Law § 99-kk) will be used to fund the awards by the State Cannabis Advisory Board to reinvest in communities disproportionately affected by past federal and State drug policies. The grants must be used to support job placement, job skills services, adult education, mental health treatment, substance use disorder treatment, housing, financial literacy, community banking, nutrition services, services to address adverse childhood experiences, afterschool and child care services, system navigation services, and legal services to address barriers to reentry.

Personal Cultivation of Cannabis

Pursuant to Penal Law § 222.15, individuals 21 or older may plant, cultivate, harvest, dry, process and possess up to three mature cannabis plants and three immature cannabis plants at their private residence at any one time. Cannabis must be securely stored by reasonable steps designed so that the plants are not accessible to any person under 21. No more than six mature and six immature cannabis plants may be cultivated within any private residence, regardless of the number of individuals 21 or older who reside there. Individuals may lawfully possess up to five pounds of cannabis in their private residence or on the grounds of their private residence, so long as they take reasonable steps designed to ensure that the cannabis is in a secured place not accessible to any person under 21. A violation of Penal Law § 222.15 is subject to a civil penalty of up to \$125 per violation.

Cities, villages, towns, and counties may enact reasonable regulations of personal cultivation and home possession. Violations of such regulations may constitute an infraction subject to a civil penalty of no more than \$200. Local governments may not adopt regulations that prohibit personal cultivation or possession as authorized under Penal Law § 222.15.

Personal cultivation of cannabis pursuant to Penal Law § 222.15 is not allowed until the Office of Cannabis Management issues regulations for home cultivation and storage. The Office must issue such regulations for home cultivation by certified cannabis patients no later than September 30, 2021. Regulations for personal cultivation by adult-use cannabis consumers must be promulgated no later than 18 months following the first authorized retail sale of adult-use cannabis products to a cannabis consumer. Consequently, legal home cultivation for recreational use is not likely to be allowed under the MRTA until 2024 or beyond.

Protections for Cannabis Users

In addition to the legal use of cannabis authorized under Penal Law §§ 222.05 and 222.15, Cannabis Law § 127 prohibits individuals from being discriminated against for engaging in conduct permitted under the Cannabis Law. 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 failing to do so would cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations; or (b) if the property has in place a smoke-free policy, it is not required to permit the smoking of cannabis products on its premises, provided no such restriction may be construed to limit the certified medical use of cannabis.

Schools, colleges, and universities may not refuse to enroll and may not otherwise penalize individuals solely for conduct allowed by the Cannabis Law, except (a) if failing to do so would cause the school, college or university to lose a monetary or licensing-related benefit under federal law or regulations; or (b) if the school, college or university has adopted a code of conduct prohibiting cannabis use on the basis of a sincere religious belief of the school, college or university.

Sale of Cannabis

Cannabis may not be sold to anyone who is under the age of 21 or who is visibly intoxicated. Cannabis retailers may not sell cannabis products knowing or reasonably believing that the person to whom the cannabis products are being sold is acquiring the cannabis for the purpose of selling or giving it away in violation of State law or regulations.

Cannabis purchasers must provide written evidence of their age, which may consist of:

- a) a valid driver's license or non-driver identification card issued by the NYS Department of Motor Vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or
- b) a valid passport issued by the United States government or any other country, or
- c) an identification card issued by the United States armed forces.

Special Rules for Licensing of On-Site Consumption Establishments

In approving on-site consumption licenses, the Cannabis Control Board may consider various factors, including but not limited to:

- (a) the number, classes, and character of other licenses in proximity to the location and in the particular municipality;
- (b) whether there is a demonstrated need for spaces to consume cannabis;
- (c) any effect on pedestrian or vehicular traffic, and parking;
- (d) potential noise impact generated by the proposed premises; and
- (e) any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage and the public interest of the community.

In addition to sales being restricted to individuals 21 years of age and older, no one under 21 years of age may be permitted on the premises of a cannabis on-site consumption facility.

Social Equity Program

One of the primary objectives of the MRTA is to promote social equity and justices. To that end, the Cannabis Law establishes programs to foster social equity and assist minority and women-owned businesses, distressed farmers, and service-disabled veterans. The Cannabis Law requires the State to develop a social and economic equity plan and an incubator program designed to promote racial, ethnic, and gender diversity when issuing licenses, with a goal of awarding 50% of adult-use cannabis licenses to social and economic equity applicants and to help communities disproportionately impacted by the enforcement of cannabis prohibition.

Law Enforcement Practices

In any criminal proceeding, no finding or determination of reasonable cause to believe a crime has been committed may be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:

- (a) the odor of cannabis;
- (b) the odor of burnt cannabis;
- (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in Penal Law Article 222;
- (d) the possession of multiple containers of cannabis without evidence of concentrated cannabis in the amounts authorized in Penal Law Article 222;
- (e) the presence of cash or currency in proximity to cannabis or concentrated cannabis; or

- (f) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with Penal Law § 222.15.

The prohibition in Penal Law § 222.05(3)(b) with respect to the odor of burnt cannabis does not apply when a law enforcement officer is investigating whether a person is operating a motor vehicle, vessel or snowmobile while impaired by drugs. However, during such investigations, the odor of burnt cannabis does not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.

Public Consumption of Cannabis

With respect to smoking and vaping, cannabis is treated the same as smoking or vaping tobacco products. Consequently, pursuant to Public Health Law Article 13-E, cannabis may not be smoked or vaped in the following indoor areas:

- (a) places of employment;
- (b) bars;
- (c) food service establishments, except as provided in Public Health Law § 1399-q;
- (d) enclosed indoor areas open to the public containing a swimming pool;
- (e) public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines;
- (f) ticketing, boarding and waiting areas in public transportation terminals;
- (g) youth detention centers and facilities;
- (h) any facility that provides child care services;
- (i) child day care centers;
- (j) group homes for children;
- (k) public institutions for children;
- (l) residential treatment facilities for children and youth;
- (m) all public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities and other educational and vocational institutions, except that these restrictions do not apply in any off-campus residential unit occupied by a person who is not enrolled as an undergraduate student in such college, university or other educational or vocational institution;
- (n) general hospitals and residential health care facilities;
- (o) commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;
- (p) indoor arenas;
- (q) zoos; and
- (r) bingo facilities.

In addition, smoking or vaping of cannabis is not permitted in the following outdoor areas:

- (a) ticketing, boarding or platform areas of railroad stations operated by the MTA;
- (b) on the grounds of hospitals and residential health care facilities or within 15 feet of a building entrance or exit.

Pursuant to Penal Law § 222.10 and Public Health Law Article 13-E, individuals may not smoke or vape cannabis on school grounds (as defined by Education Law 1125(10)), within 100 feet of entrance, exit or outdoor areas of an elementary or secondary school or of a public library (except this does not apply to smoking or vaping in a residence or within the real property boundary lines of residential real property), or in or on a school bus.

New York Courts have ruled that local governments are not preempted from imposing their own local smoking and vaping restrictions that are more stringent than what is mandated under Public Health Law Article 13-E (the “Clean Air Act”). Additionally, NYS Public Health Law § 1399-r provides in relevant part that “Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.”

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

Local Officials’ Interest in Cannabis Operations

Cannabis Law § 137 prohibits any chief of police, police officer or subordinate of any police department in New York from having an interest, either directly or indirectly, in the cultivation, processing, distribution, or sale of cannabis products, or from offering for sale or recommending to any registered organization or licensee any cannabis products. This prohibition does not apply to the spouse or domestic partner of such an official. Elected village officials are not subject to these limitations unless they are assigned duties directly relating to the operation or management of the police department. This restriction is similar to NYS Alcoholic Beverage Control Law § 128, which prohibits police officers and village officials who manage the police department from having an interest in the manufacture or sale of alcoholic beverages.

Employer Concerns

The MRTA bars employers from discriminating against individuals for cannabis use (See Labor Law § 201-d). However, the MRTA amends Labor Law § 201-d to provide that notwithstanding its prohibitions against discrimination, 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 the employee is impaired while on the job.

Illegal Possession, Use, and Sale of Cannabis

While the MRTA legalizes adult-use cannabis, it does impose penalties for activities that are not authorized by the Cannabis Law or the Penal Law. Individuals under the age of 21 who are found to be in possession of cannabis or cannabis products are subject to a \$50 civil penalty (Cannabis Law § 132). Additionally, Article 222 of the Penal Law makes possessing or selling various amounts of cannabis and cannabis concentrate subject to various penalties.

Licensees are subject to civil penalties and license suspension and revocation for myriad violations.

Expungement of Records

The MRTA provides extensive procedures for expunging criminal records for many previous cannabis related convictions. The NYS Division of Criminal Justice Services and the Office of Court Administration will be promulgating rules and guidance to facilitate expunging these convictions and the handling of any records related thereto.

¹ 1990 N.Y. Op. Atty. Gen. (Inf.) 35.

² M.H.R.L. § 24(1)(a).

³ M.H.R.L. § 24(1)(a).

⁴ Id.

⁵ General discussion as to number and qualifications of petitioners for a local law subject to a referendum on petition. 1978 N.Y.

Op. Atty. Gen. (Inf.) 291.

6 Id.

7 M.H.R.L. § 24(1)(a).

8 M.H.R.L § 24(1)(a).

9 M.H.R.L § 24(1)(b).

10 Village Law § 9-908.

11 Village Law § 9-902(5).

12 Village Law § 9-900(2).

13 Village Law § 9-904.

14 Village Law § 9-902(1).

15 Id.

16 Village Law § 9-908.

17 Id.

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

Thursday, April 15, 2021

www.nycom.org



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Theme of Today's Webinar

T.B.D.



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

<ul style="list-style-type: none"> Engaging In <ol style="list-style-type: none"> a. Cultivating, b. Processing, c. Distributing, d. Delivering, e. Dispensing Cannabis, or 	<ul style="list-style-type: none"> 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



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 Opt-Out, It May Opt Back In at Any Time



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



Permissive Referendum

▪ Cities

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



Permissive Referendum

▪ Cities

- Petitions Must Be Filed In City 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



Permissive Referendum

▪ Cities

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



Permissive Referendum

▪ Cities

- 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



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



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



Permissive Referendum

■ Villages

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



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



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



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



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

- 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**



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?



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



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



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



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

- | | |
|-------------------------------------|--|
| 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



Equity & Justice

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



Still A Lot To Be Determined

Questions?





FRAME of REFERENCE

Rebecca Ruscito, NYCOM Counsel



Can't You Smell that Smell? Regulating Smoking in Public Spaces

On March 31, 2021, New York State joined fifteen other states and the District of Columbia in legalizing adult-use recreational cannabis with the enactment of "The Marijuana Regulation and Taxation Act" (MRTA). The law creates a regulated and taxed cannabis industry and strives to address the social and economic justice issues related to sale and use of marijuana. While the regulatory framework and legal sale of cannabis within the State is at least a year away, the law immediately legalized the possession and use of cannabis among adults 21 years of age and older.

Under the law, cities and villages may opt out of the retail sale of cannabis within their jurisdictions and prevent on-site consumption establishments from locating and operating within their municipal boundaries by adopting a local law subject to a permissive referendum on or before December 31, 2021.¹ Local governments, however, cannot opt out of the legal use of cannabis or cannabinoid substances within their municipal borders. Given its conspicuous odor, many cities and villages are looking at ways to regulate smoking marijuana in municipal areas, including parks, sidewalks, and other shared public spaces. This article will address the authority local governments possess to regulate smoking in public spaces and the ways in which the regulation of cannabis is preempted by the State. For additional information related to the Cannabis Law, please refer to NYCOM General Counsel Wade Beltramo's article in this issue of the *Municipal Matters* magazine.

“ [L]ocal smoking restrictions that prohibit smoking on municipal streets, sidewalks, parks, and other shared public and recreational spaces are consistent with cities’ and villages’ home rule powers and is supported by State law.”

Into the Weeds: Smoking Restrictions in New York State

More than forty-five years ago, New York State started experimenting with ways to regulate smoking tobacco indoors. The State Legislature added limited antismoking provisions to the Public Health Law in 1975, and by the late 1980s, the health risks associated with secondhand smoke were ubiquitous, but the State Legislature had yet to expand its smoking restrictions in most areas open to the public. Consequently, in 1987, the State’s Public Health Council (PHC) attempted to promulgate a comprehensive regulatory framework through which it sought to “limit the public’s exposure to environmental tobacco smoke.”² Relying on its broad authorization of power under the Public Health Law to address “any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York,” the PHC limited the smoking and carrying of lighted cigarettes, cigars, pipes, and other smoking devices in indoor areas open to the public.³ The regulations were promptly challenged and eventually reviewed by the New York State Court of Appeals.⁴

Based on a technical application of the PHC’s enabling legislation, the Court concluded that Council lacked the statutory authority to adopt the regulations. However, the Court rejected the plaintiffs’ argument that the Legislature had preempted the PHC from regulating indoor tobacco use, stating, “nothing in the Legislature’s 1975 adoption of a limited antismoking provision (Public Health Law art. 13–E) suggests a legislative intention to narrow the statutory mandate or exclude the area of smoking restrictions.”⁵ The Court continued, “whether phrased in terms of ‘preemption’ or in terms of consistency with the existing statutory scheme, plaintiffs’ arguments concerning the effect of Public Health Law article 13-E on the PHC’s power to regulate public smoking must fail.”

Puff Piece: Smoking Defined

Unlike the PHC, the State possesses the legal authority to enact legislation that restricts smoking, while balancing the perceived economic impact associated with smoking restrictions.⁶ The Legislature ultimately amended Public Health Law Article 13-E and adopted the Clean Indoor Air Act in 1989. While the legislation also encountered legal challenges, the courts held that the Act was “not a blanket prohibition against smoking, merely a limitation of smoking in public areas where other persons will involuntarily be exposed to second hand smoke,” and upheld the legislation as a legitimate exercise of the State’s police powers.⁷ Federal courts also upheld the law’s constitutionality, finding no protected right to smoke or other constitutionally protected action was associated with smoking.⁸

The Clean Indoor Air Act codified many of the smoking restrictions that the PHC attempted to impose. Since its enactment, the Act has been routinely updated to incorporate new technologies and uses of tobacco, specifically, vaping in 2017, and is now referred to as the “Clean Air Act” because it also impacts where smoking is

permitted outdoors. The Act was also amended to include cannabis use.

The current law defines “smoking” as “the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or cannabis as defined in section 222.00 of the penal law, or cannabinoid hemp as defined in section three of the cannabis law.”⁹ Vaping is defined as the use of an electronic cigarette, which is described as “an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such a device.”¹⁰ Collectively, smoking and vaping under New York State Law includes the burning or inhalation of both tobacco and cannabis substances.

Keep Off the Grass: Regulating Local Use

Public Health Law § 1399-o specifically prohibits smoking and vaping in a variety of indoor and outdoor locations. These areas include: workplaces, bars, food service establishments, means of mass transportation, including the ticketing, boarding and waiting areas of transportation terminals; child care, day care, and youth centers; public and private colleges, universities, as well as other educational and vocational institutions, including dormitories and residential facilities; hospitals, indoor areas, zoos, and bingo facilities.¹¹ Smoking and vaping is also prohibited on school grounds or within 100 feet of the entrances, exits, or outdoor areas of any public or private elementary or secondary schools, as well as playgrounds during the hours between sunrise and sunset.¹²

In addition to this long list of proscriptions, the Clean Air Act specifically contemplates and authorizes local regulations that exceed the standards codified in statute. Public Health Law § 1399-r unambiguously states, “Smoking and vaping may not be permitted where prohibited by any other law, rule, or regulation or any state agency or *political subdivision* of the

state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.” (emphasis added).¹³ This specific delegation of power combined with the Court’s pronouncement that the Legislature did not intend preempt all smoking regulations in the *Boreali* case described above, equips cities and villages with both statutory authority and precedential jurisprudence supporting their ability to adopt local laws that regulate smoking within their municipal boundaries.

Restrictions on Otherwise Legal Activities

Local governments have broad authority to adopt local laws protecting the order, conduct, safety, health, and wellbeing of persons or property within their jurisdictions.¹⁴ Such local laws may include limitations on otherwise legal activities, provided that such regulations are consistent with the Laws of the State and State Constitution. Accordingly, local smoking restrictions that prohibit smoking on municipal streets, sidewalks, parks, and other shared public and recreational spaces are consistent with cities’ and villages’ home rule powers and is supported by State law.

No Right to Smoke

As noted above, the courts have consistently found that there is no right to smoke. Notably, the act of smoking is passive and claims that smoking invokes the smoker’s freedom of expression have been rejected by reviewing courts.¹⁵ Even if smoking “embodies some shred of expressive conduct protected under the First Amendment,” courts have held that smoking bans would pass constitutional muster under an intermediate level of scrutiny as content-neutral restrictions that are substantially related to a compelling governmental interest.¹⁶

High Expectations: Avoiding Preemption and Ensuring Enforceability

While case law and the Clean Air Act support local governments’ ability to regulate smoking, MRTA specifically prevents counties, cities, towns, and villages, from adopting any local law, rule, ordinance, regulation, or prohibition pertaining to the operation of licensure of registered organizations, adult-use cannabis licenses, or cannabinoid hemp licenses. Additionally, MRTA provides specific protections for cannabis users to prevent individuals from being discriminated against for engaging in conduct permitted under the Cannabis Law.

To avoid conflicting with the statute, it is paramount that cities and village use the definition of smoking set by the Public Health Law when adopting local regulations restricting smoking in public areas. Restrictions that attempt to define smoking cigarettes or other tobacco substances differently from cannabis are susceptible to challenge because the State has preempted the definition of smoking. Also, attempting to redefine the term “smoking” or confining local regulations to a particular substance in a very nuanced or particularized manner, may also conflict with the State’s legalization of recreational cannabis thereby thwarting its intent. Consequently, NYCOM recommends that local smoking restrictions utilize the definition of smoking provided in Public Health Law to prevent preemption and ensure such local laws withstand legal challenges to their validity.

Lastly, Public Health Law § 1399-p requires the prominent display of no-smoking signs where smoking and vaping are regulated by provisions of Public Health Law Article 13-E. This obligation is placed on the owners, operators, and managers of the regulated areas, and includes the locations controlled by the State and local governments.¹⁷ However, the duty to post signs is specifically limited to the areas regulated by the Public Health Law. As a result, it does not appear that posting signs is a condition precedent to the enforceability of locally adopted smoking regulation.

While the NYCOM staff does not believe the requirement to post non-smoking

signs extends to cities and villages enacting local smoking regulations, we believe that signage will support and strengthen the enforceability of local laws and strongly recommend the use of signage when adopting and enforcing smoking restrictions in and on municipal spaces.

Conclusion

There is significant legal authority on which local governments may rely when adopting local smoking regulations. Nothing in State law would prevent cities and villages from prohibiting smoking in public areas, including municipal streets, sidewalks, parks, and other recreational locations. However, cities and villages should not attempt to redefine “smoking” or regulate the smoking of marijuana differently from smoking tobacco.

For more information relating to local smoking regulations and to obtain copies of the references cited herein, please contact NYCOM Counsel Rebecca Ruscito at (518) 463-1185 or by email at rebecca@nycom.org.

Endnotes

1. *Cities, towns, and villages may all opt-out of retail sales and/or on-site consumption establishments. Towns opting out of cannabis sales are limited to the jurisdictions outside of any village’s municipal boundaries located within the town. To effectuate the opt-out, a local government must adopt a local law subject to a permissive referendum on or before December 31, 2021. For more information about the MRTA and opting-out of retail sales, please visit: <https://www.nycom.org/2-uncategorised/1609-marijuana-legalization-resources>.*
2. *Boreali v. Axelrod*, 518 N.Y.S.2d 440, 441 (1987).
3. *Id.* at 441.
4. See, *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987).
5. *Id.* at 15.
6. See, *Fagan v. Axelrod*, 550 N.Y.S.2d 552 (1990).
7. *Id.* at 559-560, 561.
8. See, *NYC C.L.A.S.H., Inc. v. City of New York*, 315 F.Supp.2d 461 (2004); see also *Players, Inc. v. City of New York*, 371 F.Supp.2d 522 (2005).
9. Public Health Law § 1399-n(8).
10. Public Health Law § 1399-aa(13).
11. Public Health Law § 1399-o(1-2).
12. Public Health Law §§ 1399-o(3-4), 1399-o-1.
13. Public Health Law § 1399-r(3).
14. Municipal Home Rule Law § 10(1)(a)(12).
15. *NYC C.L.A.S.H., Inc. v. City of New York*, 315 F.Supp.2d 461 (2004).
16. *Id.* at 479.
17. See, Public Health Law § 1399-r(3).



Wade Beltramo,
NYCOM General Counsel

For The Record



New York's Marijuana Regulation and Taxation Act: The Legalization of Adult-Use Cannabis in New York - Part 1

On March 31, 2021, Governor Cuomo signed into law Chapter 92 of the Laws of 2021. Known as “the marijuana regulation and taxation act” (MRTA), this legislation was enacted with the stated purpose of creating a regulated and taxed cannabis industry in New York and to provide for social and economic justice related to the sale and use of cannabis. While the MRTA legalizes the possession and use of cannabis immediately, the actual sale of adult-use cannabis is not expected to begin until late 2022 or early 2023.

The MRTA enacts an entirely new chapter of the New York State Laws (Chapter 7-A, Cannabis Law) and substantially amends numerous other provisions of State law to provide for the implementation of adult-use cannabis. In addition, the MRTA establishes two new State agencies called the New York State Cannabis Control Board and the Office of Cannabis Management, which will administer the State’s adult-use and medical use programs, promulgating rules, issuing licenses, and investigating and enforcing infractions of the law. The regulatory framework created by the MRTA

is in many ways similar to how the State currently regulates alcohol via the Alcoholic Beverage Control Law and the New York State Liquor Authority.

The MRTA creates a heavily regulated market requiring individuals and organizations to obtain a license before engaging in any of the myriad types of authorized cannabis businesses, including cultivating, processing, distributing, delivering, dispensing cannabis, or operating a cooperative, microbusiness, nursery, or on-site consumption establishment. This is the

first of two articles discussing this law. In addition, NYCOM Counsel Rebecca Ruscito has written an article in this issue of the *Municipal Matters* magazine that discusses the law regarding public smoking of tobacco and marijuana.

Legalization of Cannabis Use

The MRTA amends the NYS Penal Law, adding Article 222 Cannabis, which sets forth both legal and illegal activities regarding adult-use cannabis. Penal Law § 222.05 expressly states that any individual 21 or older may:

- (a) Possess, display, purchase, obtain, or transport up to 3 ounces of cannabis and up to 24 grams of concentrated cannabis;
- (b) Transfer, without compensation, to another person 21 or older, up to 3 ounces of cannabis and up to 24 grams of concentrated cannabis;
- (c) Use, smoke, ingest, or consume cannabis or concentrated cannabis unless otherwise prohibited by state law;
- (d) Possess, use, display, purchase, obtain, manufacture, transport or give to any person 21 or older cannabis paraphernalia or concentrated cannabis paraphernalia;
- (e) Plant, cultivate, harvest, dry, process or possess cultivated cannabis in accordance with Penal Law § 222.15; and
- (f) (i) assist another person who is 21 or older, or (ii) allow property to be used in any of the acts described in the preceding paragraphs.

In addition, cannabis, concentrated cannabis, cannabis paraphernalia or concentrated cannabis paraphernalia involved in any lawful conduct under Penal Law § 222.05 are not contraband nor subject to seizure or forfeiture of assets. Moreover, conduct deemed lawful by Penal Law §222.05 may not be the basis for law enforcement approaching, searching, seizing, arresting or detaining an individual. These provisions of law took effect March 31, 2021.

Local Opt-Out of Retail Sales

General Provisions

Cities, villages, and towns may opt out of allowing retail dispensaries and/or on-site consumption establishments from locating and operating within their boundaries. To effectuate the opt-out, such local governments must adopt a local law subject to a permissive referendum on or before December 31, 2021. A town opt-out only applies to the area of the town outside of any village(s) located therein. No city, village, or town may opt out after December 31, 2021. However, a local government that, in 2021, opts out of allowing retail dispensaries and/or on-site consumption establishments from locating within their boundaries may repeal such opt-out at any time. The local government opt-out does not apply to other types of licensed activities under the Cannabis Law.

Conducting the Permissive Referendum in Cities

The Municipal Home Rule Law sets forth the process and procedures required to conduct mandatory and permissive referenda in cities. Failure to follow the procedure required by law for conducting a referendum may result in the city council's action being invalidated.¹

Any local law adopted by a city that is subject to permissive referendum will not take effect until:

1. Forty-five days after its adoption have passed; and
2. It is approved by the electors of the city, if a petition is filed requiring the law be approved by a majority vote of the electorate.²

Petitions must be made on separate sheets of paper and the signatures on each sheet must be signed and authenticated in the manner provided by the Election Law for the signing and authorizing of nominating petitions.³ These sheets, when fastened together and offered for filing, are deemed to constitute one petition.

Petitions must be filed in the city clerk's office within 45 days of the adoption of the local law. Petitions must be signed by a number of electors equal to 10% of the total number of votes cast in the city for governor at the last gubernatorial election.⁴ All signers of the petition must be qualified voters.⁵ A qualified voter is an individual who is currently registered to vote and was also registered during the previous general election.⁶

If a petition is filed, a proposition on the local law must be submitted to the voters at the next election of State or local government, not less than 60 days after the filing of the petition. The petition may also request that the city council direct a special election be held.⁷

Once the petition has been filed with the city clerk, he or she must examine it not later than 30 days after the date of filing, or 45 days before the date of the election where the referendum would appear on the ballot, whichever is earlier. The clerk then transmits a certificate to the city council attesting that he or she has examined the petition and stating whether the petition complies with the law's requirements.⁸

If within five days after the last day to file a certificate to the legislative body, a written objection to the clerk's certification is filed in the State Supreme Court in the county in which the city is located, the court must determine any question arising from the petition and issue an order. This proceeding must be heard and determined in the manner prescribed in Election Law § 16-116.

Conducting the Permissive Referendum in Villages

A local law adopted by a village that is subject to a permissive referendum under Municipal Home Rule Law § 24, or any other State statute, will be conducted pursuant to Article 9 of the Village Law.⁹ Under Article 9, a village board of trustees may bypass the petition process by submitting a permissive referendum to voters upon its own motion.¹⁰

Compliance with Article 9 is therefore consistent with the terms of the Municipal Home Rule Law. Additionally, Village Law § 9-900(1) states that whenever the Village Law provides that an act or resolution of the board of trustees is subject to a permissive referendum, the permissive referendum must be conducted as provided in Article 9.

Many referenda may be timed so that they are held during a regularly scheduled village election. The criteria for determining when a referendum is to be held is set forth in Village Law § 9-902. If the petition for a permissive referendum is filed after the first day of the month in which a general village election is to be held and before the first day of the month two months prior to the next general village election, the referendum must be held at a special election of the village to be held not less than 10, nor more than 60, days after the filing of the petition.¹¹

Within 10 days after the board of trustees adopts any local law or resolution that is subject to a permissive referendum, the village clerk must post and publish, in the same manner as provided for the notice of a general village election, a notice setting forth the date that the local law or resolution was adopted.¹² The notice must also contain an abstract of the local law or resolution stating its purpose and indicating that the local law or resolution is subject to a permissive referendum. If more than one referendum is to be voted upon, each must be separately and consecutively numbered.¹³

The purpose of this notice is to afford the electorate the opportunity to circulate a petition on the question. If the local law or resolution is subject to a mandatory referendum, this notice is not required.

For a vote to be held on a local law or resolution that is subject to a permissive referendum, a valid petition must be filed in the office of the village clerk within 30 days of the passage of the legislative act. If no petition is filed within the 30 days, the local law or resolution goes into effect by operation of law.¹⁴

The petition must be signed by a number of village electors equal to at least 20% of the electors of the village, as shown on the register of electors for the previous general village election.¹⁵ It must be noted that the percentage requirement is 20% of residents registered to vote, and not 20% of residents who actually voted.

If an act is subject to a permissive referendum, the board of trustees may, upon its own motion, submit the act to a referendum, eliminating the need for a petition.¹⁶ This is an alternative to the citizen-initiated petition process and expedites the vote by eliminating the petition's "waiting period." The remainder of the process would be the same as if a petition had been filed on the date that the board submits the act to the referendum.¹⁷

For information on the process and procedure of conduct-

ing permissive referenda, see NYCOM's Management Series *Enacting Local Legislation and Conducting Referenda*, located on the NYCOM website at <https://www.nycom.org/resources/publications> for NYCOM members only. A sample local law opting out of hosting retail cannabis dispensaries and/or on-site cannabis consumption establishments can be found on the NYCOM website at www.nycom.org

Protections for Cannabis Users

In addition to the legal use of cannabis authorized under Penal Law §§ 222.05 and 222.15, Cannabis Law § 127 prohibits individuals from being discriminated against for engaging in conduct permitted under the Cannabis Law. 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 failing to do so would cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations; or (b) if the property has in place a smoke-free policy, it is not required to permit the smoking of cannabis products on its premises, provided no such restriction may be construed to limit the certified medical use of cannabis.

Schools, colleges, and universities may not refuse to enroll and may not otherwise penalize individuals solely for conduct allowed by the Cannabis Law, except (a) if failing to do so would cause the school, college or university to lose a monetary or licensing-related benefit under federal law or regulations; or (b) if the school, college or university has adopted a code of conduct prohibiting cannabis use on the basis of a sincere religious belief of the school, college or university.

Conclusion

This is only a brief summary of the legalization of marijuana in New York and the authority and procedure for cities and villages to opt out of hosting retail marijuana dispensaries and/or on-site consumption establishments. Part 2 of this article will appear in the next issue of the *Municipal Matters* magazine. For more information about the MRTA or the process of conducting referenda, contact the NYCOM staff at (800) 446-9266.

Endnotes

1. 1990 N.Y. Op. Atty. Gen. (Inf.) 35.
2. M.H.R.L. § 24(1)(a).
3. M.H.R.L. § 24(1)(a).
4. *Id.*
5. General discussion as to number and qualifications of petitioners for a local law subject to a referendum on petition. 1978 N.Y. Op. Atty. Gen. (Inf.) 291.
6. *Id.*
7. M.H.R.L. § 24(1)(a).
8. M.H.R.L. § 24(1)(a).
9. M.H.R.L. § 24(1)(b).
10. Village Law § 9-908.
11. Village Law § 9-902(5).
12. Village Law § 9-900(2).
13. Village Law § 9-904.
14. Village Law § 9-902(1).
15. *Id.*
16. Village Law § 9-908.
17. *Id.*

Sample Cannabis Local Law Opting Out of Retail Sales

[Pursuant to Cannabis Law § 131, a local law opting out of allowing retail cannabis dispensaries and/or on-site cannabis consumption establishments from locating within a municipality is subject to a permissive referendum. Consequently, any local law adopted pursuant to Cannabis Law § 131 may not be filed with the Secretary of State until either the applicable time period for filing a petition to trigger a referendum has elapsed or a referendum has been conducted approving the local law. Note that local governments may opt out of allowing BOTH retail cannabis dispensaries and on-site cannabis consumption establishments OR opt out of allowing EITHER retail cannabis dispensaries OR on-site cannabis consumption establishments.

Cannabis Law § 131 subjects local opt-out laws to permissive referendum. For cities, the permissive referendum is triggered if a petition is filed with the city clerk signed by qualified city electors in a number equal to at least 10% of the number of votes cast for governor in the city at the last gubernatorial election. For villages, the permissive referendum may be triggered either (a) by a petition being filed with the village clerk signed by qualified village electors in a number equal to at least 20% of the registered electors in the previous general village election, or (b) by the board of trustees adopting a resolution submitting the local law to a referendum of the voters for their approval.

For more information on the process and procedure of conducting permissive referenda, see NYCOM's publication *Enacting Local Legislation and Conducting Referenda*, available for download from the member's section at www.nycom.org]

Local Law No. _____ of the year 2021

City/Village of _____, County of _____

A local law adopted pursuant to Cannabis Law § 131 opting out of licensing and establishing retail cannabis dispensaries and/or on-site cannabis consumption establishments within the City/Village of _____.

Section 1. Legislative Intent

It is the intent of this local law to opt the City/Village of _____ out of hosting retail cannabis dispensaries and/or on-site cannabis consumption establishments within its boundaries.

Section 2. Authority

This local law is adopted pursuant to Cannabis Law § 131, which expressly authorizes cities and villages to opt-out of allowing retail cannabis dispensaries and/or on-site cannabis consumption establishments to locate and operate within their boundaries.

Section 3. Local Cannabis Retail Dispensary and/or On-Site Consumption Opt-Out

The City Council/Board of Trustees of the City/Village of _____, County of _____, hereby opts-out of licensing and establishing cannabis retail dispensaries and/or cannabis on-site consumption establishments within its boundaries.

Section 4. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective date

This local law shall take effect immediately upon filing with the Secretary of State. Pursuant to Cannabis Law § 131, this local law is subject to a permissive referendum and thus may not be filed with the Secretary of State until the applicable time period has elapsed to file a petition or a referendum has been conducted approving this local law.

Village Board Meeting

Meeting Items
Agenda Item

NYCOM Conference

- Running Meetings & Taking Minutes: There Are A Lot of Ways to Do It Right **
- Fraud Prevention Brainstorming Workshop +
- Employee Handbooks: What's the Big Deal? *

10:45 a.m.

CONCURRENT SESSIONS

- ARPA Reporting +
- From Facility to Faucet: Water and Sewer Administration (Part I) **+
- Duties and Responsibilities of the Clerk-Treasurer +
- Open Meetings Law: How it Works in Normal Times **
- Professional Development/Wellness
- Employee Leave Time: It Adds Up! *

12:00 p.m.

Lunch

NYS Society of Municipal Finance Officers' Luncheon and Annual Business Meeting

1:30 p.m.

CONCURRENT SESSIONS

- Finance Officers' Seminar
- From Facility to Faucet: Water and Sewer Administration (Part II) **+
- Employee Safety #
- Handling Record Requests Under FOIL *
- Developing a Multi-Year Plan (With Tools) +
- Policies and Procedures: The Must Have's and Should Have's **

3:15 p.m.

CONCURRENT SESSIONS

- Eligible Uses for ARPA Funding **
- Understanding the True Cost of Services +
- The Board Meeting Minutes...Why do the Auditors Care? **
- Women in Government: Learning From Leaders
- Navigating the Minefield of Regulating Political Signs **

Evening

Dining Downtown on Your Own

Wednesday, September 22

7:00 a.m.

Breakfast

9:00 a.m.

CONCURRENT SESSIONS

- Improving the Effectiveness of Claims Processing +
- The Do's and Don'ts of Issuing Debt +
- Developing an Effective Fund Balance Policy **
- New York's Legal Requirements for Managing Records
- Professional Development/Work-Life Balance
- Collective Bargaining in a Post-Pandemic World *

10:45 a.m.

CONCURRENT SESSIONS

- Establishing and Accounting for Reserves +
- Budgeting 101+: Developing a Structurally Balanced Budget - Part I ++
- Understand the Constitutional Prohibition Against Gifting and Loaning Municipal Resources *++
- Cell Towers, Rental Agreements and Solar, Oh My: Regulating and Renting Municipally Owned Property *
- Retirement System Update +

12:00 noon

Lunch

1:15 p.m.

CONCURRENT SESSIONS

- The Essentials of Municipal Payroll +
- Budgeting 101+: Developing a Structurally Balanced Budget - Part II ++
- So You Think It's Easy? Conducting Village Elections *
- Prior Written Notice
- Stump the Staff#

7:00 p.m.

"Hippie" Theme Party and Dinner

Thursday, September 23

7:00 a.m.

Breakfast

9:00 a.m.

CONCURRENT SESSIONS

- Annual Financial Report +
- Communicating and Understanding Financial Reports +
- Social Media for Practical Purposes
- Understanding How to Handle Unemployment and Workers' Compensation Claims *
- Using a Consultant: When, Why and How
- What Local Officials Need to Know About New York's New Cannabis Law *#

10:45 a.m.

CONCURRENT SESSIONS

- Accounting for Capital Projects +
- Internal Controls for Cash Receipts +
- Serving Your Constituents: Handling Complaints and Requests and Communicating Information to the Public
- Cyber Security: Don't Be Taken Hostage #
- Managing a Municipal Police Department in a Changing World *
- Avoiding Buyer's Remorse: Purchasing Goods and Services *++

12:00 p.m.

Lunch

NYS Association of City & Village Clerks Luncheon and Annual Business Meeting

1:30 p.m.

CONCURRENT SESSIONS

- Ask the Auditors
- Clerks' Seminar

- o Local Laws and Referenda **
- o Thinking About Retirement?

3:00 p.m.

PLENARY

- o Boot Camp! #

6:00 p.m.

Reception

7:00 p.m.

Annual Banquet and Awards Dinner

Speaker: NYS Comptroller Thomas P. DiNapoli

Friday, September 24

7:00 a.m.

Conference Concludes: Breakfast on your own

Updated 7/22/21

ANNUAL CONVENTION

CONFERENCES & WORKSHOPS

- WINTER LEGISLATIVE MEETING
- FALL TRAINING SCHOOL
- PUBLIC WORKS SCHOOL
- REGIONAL WORKSHOPS

WEBINARS

VENDORS

ELECTED OFFICIALS ACADEMY

MEETING RESOURCES

- PAST PRESENTATIONS
- SPEAKER RESOURCES
- MAYOR BILL KELLY LEADERSHIP EDUCATION SCHOLARSHIP FUND
- PHOTO AND VIDEO GALLERY
- PROFESSIONAL CERTIFICATIONS
- [CONTACT DIRECTOR OF EVENTS](#)