

VILLAGE OF PITTSFORD

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Village Hall ca 1855 (remodeled 1937)

Village of Pittsford Board of Trustees Workshop Meeting September 9, 2021, 6:30 PM

Tentative Agenda

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

Meeting Items

1. Vaccination Policy
2. Virtual Meetings
3. Retainer Agreement Mindy Zoghlin
4. Marijuana Legalization
5. Public Comment Policy

Next Scheduled Meeting –Regular Meeting September 14, 2021

*Subject to Change Without Notice

Village Board Meeting

Meeting Items
Agenda Item

Vaccination Policy

Village of Pittsford COVID-19 Vaccination Policy

Policy No. _____

Adopted _____, 2021

Preamble

As of August 27, 2021, in the United States there were 9,830,130 new reported cases of COVID-19, a 25.6% growth in cases; a total of 38,384,595 cases and 633,566 deaths. In New York State there have been a total of 2,254,155 reported cases and 54,130 deaths <https://covidusa.net>

On August 23, 2021, the Food and Drug Administration (FDA) granted full approval of the Pfizer/BioNTech COVID-19 vaccine for people ages 16 and over. "As the first FDA-approved COVID-19 vaccine, the public can be very confident that this vaccine meets the high standards for safety, effectiveness and manufacturing quality the FDA requires of an approved product," said Janet Woodcock, the acting FDA commissioner. The vaccine was 91% effective in preventing COVID-19 disease based on the updated clinical trials, the FDA said in its most recent announcement. The vaccine is effective in preventing COVID-19 and potentially serious outcomes including hospitalization and death. In the United States, 204 million doses of the Pfizer/BioNTech vaccine have been administered. More than 92 million people have received the full two-dose regimen. The most common side effects reported by clinical trial participants were pain, redness and swelling at the injection site, fatigue, headache, muscle or joint pain, chills and fever.

The Equal Employment Opportunity Commission (EEOC) has issued guidance that federal anti-discrimination laws do not prohibit employers from requiring all employees who physically enter the workplace to be vaccinated for COVID-19.

The Village of Pittsford issues this policy in accordance with its right to set workplace conditions and in order to provide a safe workplace for all of its employees.

Policy

1. All Village employees must receive and show proof of vaccination of at least the first dose of an FDA approved COVID-19 vaccine by October 1, 2021.
2. After October 1, 2021, Village employees who have not received at least the first dose of an FDA approved COVID-19 vaccine are not permitted to physically enter the workplace.
3. Employees who have not yet been vaccinated shall wear a CDC approved mask or face covering at all times while in the workplace or while in a Village vehicle with other occupants and shall undergo such testing as may be required by the Village of Pittsford, not to exceed a weekly basis.

4. Nothing in this policy shall prevent the Village of Pittsford from requiring all employees, regardless of vaccination status, to wear a CDC approved mask or face covering while in the workplace or Village vehicles.
5. Nothing in this policy shall prevent the Village of Pittsford from requiring booster vaccinations in the future should they become fully approved by the FDA.
6. There are two limited exemptions which the Village may consider to grant as reasonable accommodations for employees:
 - (i) Medical Exemption- If a licensed physician or certified nurse practitioner certifies that the COVID-19 vaccine is detrimental to the individual based upon a specific pre-existing health condition, but only until the COVID-19 vaccine is found to no longer be detrimental to the individual's health.
 - (ii) Religious Exemption- The individual holds a genuine and sincere religious belief, practice or observance contrary to the practice of immunization. If an employee requests a religious accommodation and the Village is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice or observance, the Village may request additional supporting information from the employee.

Requests for accommodation will be considered on a case-by-case basis.

The Village may decline a request for accommodation if it is determined that to grant an accommodation would create a direct threat to the health or safety of individuals in the workplace.

The Village may decline a request for accommodation if it is determined that to grant an accommodation would create an undue hardship on the Village.

7. The failure to comply with this policy may result in discipline including but not limited to separation from employment.
8. This Policy is subject to revision and may be updated and revised by The Village from time to time in response to current conditions, information and guidance from the CDC, Department of Health, Federal and State governments, executive order or regulation, as well as the needs of the Village.

Dated: August 27, 2021

From: [Christian Casini \(ccc@orblaw.com\)](mailto:ccc@orblaw.com)
To: [Dorothea](#); [Mayor Plummer](#)
Subject: RE: Vaccination Policy
Date: Thursday, September 2, 2021 3:16:12 PM
Attachments: [image004.png](#)
[image003.png](#)

I spoke to Jeff regarding enforcement for members of Village Boards. He said,

There is a provision in your code allowing for discipline of public officers. It is Chapter 28 of Village code. It is very bare bones and not very well drafted. It refers to the procedure set forth in subdivision 2 of section 75 of the civil service law.

If the policy were broadened to include Officers, then you are not really disciplining them, you are preventing them from entry if they have not been vaccinated. They could still perform their duties because they can attend all meetings virtually if the meeting is noticed that way and the public is allowed to attend at the location where the officer is attending remotely. If the officer does not attend meetings regularly because the prohibition for entry into Village Hall and an unwillingness to attend virtually, then presumably that would be reason for a disciplinary proceeding where the result could be dismissal. Short answer – I believe that you can legally prevent a non-vaccinated officer from entering Village Hall.

I did some quick research and found that in April 2021 that CVS Pharmacy announced the availability of three over-the-counter COVID-19 testing options in stores and online. The CVS announcement stated:

From: [Christian Casini \(ccc@orblaw.com\)](mailto:ccc@orblaw.com)
To: [Dorothea](#)
Cc: [Mayor Plummer](#)
Subject: RE: Vaccination Policy
Date: Wednesday, September 1, 2021 2:40:59 PM
Attachments: [image004.png](#)
[image003.png](#)

Hello Dorothea,

I just moments ago virtually attended a national legal seminar on mandatory vaccinations. One of the issues debated by the prominent lawyers on the panel was whether employees can be required to pay for testing mandated by the employer.

First, as you may know, most health insurance will not pay for testing mandated by an employer, as opposed to testing for medical necessity. The consensus on the panel was that if testing is mandated by the employer that it should be paid for by the employer. However, one attorney on the panel suggested that if there is an alternative- e.g., that vaccinated employees are not subject to mandatory testing, that the employer is giving the employer a choice. The conclusion being that if the employee is not vaccinated that it is their choice and that the employee should be responsible for the cost of testing. It is an interesting argument and is logically appealing.

I did some quick research and found that in April 2021 that CVS Pharmacy announced the availability of three over-the-counter COVID-19 testing options in stores and online. The CVS announcement stated:

“The tests include the Ellume COVID-19 Home Test, the Abbott BinaxNOW COVID-19 Antigen Self Test and the Pixel by Labcorp PCR Test Home Collection Kit. All three tests have received FDA Emergency Use Authorization (EUA), do not require a prescription, and are intended for use by individuals with or without symptoms. These options provide customers with access to convenient testing that can be conducted at home and complement CVS Health’s commitment to providing consumers with access to comprehensive COVID-19 testing services. The three testing options now available at CVS include:

- ***Ellume COVID-19 Home Test Kit \$38.99¹***: *The first rapid, fully at-home test to receive Emergency Use Authorization by the FDA for at-home use without a prescription. The test delivers results in 15 minutes through a free app downloaded to a smartphone, without the need for a second test. CVS Pharmacy is the first retailer to carry the Ellume Home Test Kit. It will be in select locations in RI and MA the week of April 19, with increasing availability on CVS.com and in most CVS Pharmacy locations by the end of May.*
- ***Abbott BinaxNOW COVID-19 Antigen Self-Test \$23.99²***: *Reliable fully at-home test for surveillance and frequent use delivers results in 15 minutes. The box contains two tests which should be administered twice over three days with at least 36 hours between tests. The test is available at [CVS.com](https://www.cvs.com) and in 5,600 CVS Pharmacy locations as the week of April 19, with additional locations to follow.*

- **Pixel by Labcorp Home Collection Kit³**: *This PCR (polymerase chain reaction) test is the same test used by physicians across the U.S. Results typically are available within 1-2 days and can be accessed via the [Pixel by Labcorp](#) website. The test is available now at [CVS.com](#) and in select stores in AL, MA, RI and CT.”*

The panel agreed that if mandatory testing is required regardless of vaccination status that the cost of testing should be paid by the employer. Also, I note that if testing is required that hourly employees should be compensated for their time if testing is conducted outside of their normal work hours.

Employees can be disciplined or terminated for failure to comply with an employer’s policies, including vaccination policies. Since Board members aren’t employees they technically cannot be fired or disciplined. However, if the Village has a no entry rule for non-vaccinated members that may be enforceable in some manner. I will ask Jeff for his thoughts on that front.

-Christian

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Village Board Meeting

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Virtual Meetings



Governor Hochul and the State Legislature Authorize the Continuation of Remote Meetings

September 2, 2021

Yesterday, the State Legislature returned to the State Capitol and passed a [bill](#) introduced at the request of Governor Hochul, which, among other things, would address one of NYCOM's priorities by allowing public bodies (including local governing bodies) to once again hold meetings remotely so that government business can continue while keeping our communities safe. As was the case during the state of emergency, such public bodies must afford the public the ability to view or listen to the meeting, and such meetings must be recorded and later transcribed (see Part E). The law became effective this morning (Chapter 417 of the Laws of 2021) and will expire on January 15, 2022.

In addition, the legislation includes provisions that would continue the moratorium, in certain instances, on municipal tax foreclosures and tax lien sales relating to residential and commercial real property. Specifically, the legislation places a stay on municipal tax foreclosures and tax lien sales for any individual owning 10 or fewer residential dwelling units, whether directly or indirectly, until January 15, 2022 (see Part C, Subpart C). Similarly, the stay would also apply to commercial property, provided the owner or mortgagor of such property owns ten or fewer commercial dwelling units, whether directly or indirectly, and is a business that is resident in New York State, independently owned and operated, not dominant in its field, and employs 100 or fewer persons (see Part B, Subpart C).

In order for the stay to apply, the owner of such residential or commercial property would need to certify (by completing the appropriate declaration) that he or she has endured financial hardship as a result of COVID-19. It is important to note that the law defines tax lien sale or tax foreclosure to include "any such tax lien sale or tax foreclosure pursuant to article 11 of the real property tax law, or any general, special or local law related to real property tax lien sales or real property tax foreclosures." It is the responsibility of the enforcing officer or entity to notify the respondent of their rights under this law at least thirty days prior to the date of the tax lien sale or upon the filing of a petition of foreclosure. The enforcing officer or entity must also provide the respondent with a link to the Hardship Declaration form included in this statute.

If the respondent submits the Hardship Declaration, the law requires that the proceeding against their property be stayed through January 15, 2022.

Pension Rates for 2022-2023 Decrease by 28.4% for ERS and 4.6% for PFRS

State Comptroller Thomas P. DiNapoli, as sole trustee of the New York State and Local Retirement System (NYSLRS), announced that the estimated average employer contribution rate for the Employees' Retirement System (ERS) will be lowered from 16.2% to 11.6% of payroll (a reduction of 28.4%). The estimated average employer contribution rate for the Police and Fire Retirement System (PFRS) will be reduced from 28.3% to 27% of payroll (a reduction of 4.6%).

According to the Retirement System Actuary's estimates, the expected total employer (state and local) contributions for Feb. 1, 2023 are \$4.4 billion, which is \$1.5 billion less than the expected employer contributions during the same period for 2022. Payments based on the new rates are due by Feb. 1, 2023, with employers receiving a discount if payment is made by Dec. 15, 2022. In addition, Comptroller DiNapoli lowered the long-term assumed rate of return on the System's investments from 6.8% to 5.9%, and announced the funded ratio of the state pension fund is 99.3%.



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Village Board Meeting

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Retainer Agreement Mindy Zoghlin



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**BY EMAIL TO MAYORPLUMMER@VILLAGEOFPITTSFORD.COM
AND VILLAGECLERK@VILLAGEOFPITTSFORD.COM**

September 1, 2021

Mayor Alysa Plummer
Village of Pittsford
21 North Main Street
Pittsford, New York 14534

**RE: *VILLAGE OF PITTSFORD PLANNING & ZONING BOARD OF APPEALS
NEW YORK STATE CANAL CORPORATION and NEW YORK STATE POWER AUTHORITY
EARTHEN EMBANKMENT INTEGRITY PROGRAM***

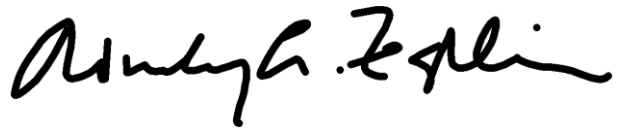
Dear Mayor Plummer,

I write in response to the Village of Pittsford PZBA's request that The Zoghlin Group expand the scope of legal services rendered to the PZBA to include matters related to the New York State Canal Corporation and State Power Authority's Earthen Embankment Integrity program. The legal fees will not exceed \$2000 without prior written approval.

The Zoghlin Group is delighted to expand the scope of services as stated in this letter. We will provide legal services for the expanded scope under the same terms and conditions set forth in our original retainer agreement dated March 21, 2021, and the same Discounted Municipal Hourly Rates. If you have any questions, please do not hesitate to call me.

I have greatly enjoyed the work we have done together so far and look forward to our continued relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "Mindy L. Zoghlin". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Mindy L. Zoghlin

The Village of Pittsford agrees to these terms.

Village of Pittsford
By Mayor Alysa Plummer

The Zoghlin Group's Standard Terms and Conditions

Payment will be due within thirty (30) days of receipt of the bill. A rebilling charge of fifteen (\$15.00) dollars will be applied to any fee not paid within thirty days. In addition, interest at the rate of nine percent (9%) per year will be applied to any amount not paid after thirty days.

The time for which we are to be paid includes not only office conferences, research, analysis, travel and advice, but also the time involved in telephone calls, faxes, e-mail, and other forms of communication.

The Village will be responsible for all reasonable and necessary expenses associated with this matter. For example, expenses may be incurred for court filing fees, court and other governmental agency fees for certificates, long distance telephone calls, duplicating charges, telecopy charges, travel, postage and printing costs. The law firm may advance money to pay for these expenses but it is not obligated to do so.

Pursuant to Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York ("NYCRR"), Part 1215, you are hereby informed that in the event you dispute the legal fee charged to you by this firm, you may, with certain exceptions, have the right to arbitration of fee disputes under Title 22 NYCRR, Part 137 of the Rules of the Chief Administrator.

The parties hope and expect that this will be a long-term relationship. Nonetheless, the Village may terminate this engagement at any time by notice in writing to us. Upon receipt of such notice, subject to such court approval as may be necessary in the context of the situation, we will promptly cease providing any service to you. The Village will be responsible for paying for our services rendered up to the time we receive such notice and for such reasonable services that we provide thereafter in connection with the transfer of responsibility for the matters we are handling at that time to your new counsel.

We may terminate this engagement by giving you 30 days prior written notice. Upon termination of our representation, the Village will be responsible for paying for our services rendered up to the time we terminate our engagement and for such reasonable services that we provide thereafter in connection with the transfer of responsibility for the matters we are handling at that time to your new counsel.

We will diligently and faithfully represent you and look forward to working with you on this matter. However, we cannot guarantee the outcome of any claim.

Please understand that any file that will be created by our firm in connection with this representation will belong to the Village. During the course of this engagement, the Village will be furnished copies of all documents and of all significant correspondence. When a matter is completed, we will deliver the originals of all documents to the Village. We will retain physical and/or electronic copies of all of the documents, all correspondence, and, to the extent we deem appropriate, all notes made in connection with this engagement in our file. You as our client may

direct us to turn over our file to you or to anyone else that the client designates, at any time. In such case, we will retain in our possession all internal communications and notes prepared by our firm and, at the expense of our client, make, retain, and store physical and/or electronic copies of all other matters in our file to be delivered to our client or at its request. It is the policy of our firm that client files that are no longer needed by our lawyers and other professionals on a recurring basis are closed and placed in storage in a location away from our offices. The off-site storage of closed files helps us to reduce our operating expenses, and consequently our fees. Because the Village will have been furnished with the originals and/or copies of all relevant materials contained in our files during the course of the active phase of our representation, in the event that we are asked by you to recover materials contained in a file that has been closed and placed in off-site storage, you agree that we shall be entitled to be paid by the requesting party a reasonable charge for the cost of the recovery of the file and the identification, reproduction, and delivery of the requested materials. Unless our firm is engaged to provide on-going representation in connection with this matter, it is our firm's policy to destroy all copies of correspondence, notes, and documents retained in our file created in connection with the representation six (6) years after the completion of the engagement.

We are enclosing an extra copy of this letter to be signed and returned to us consenting to the conditions of the representation as described in this letter. The return of a copy of this letter signed by you will serve as authorization for us to proceed. If you have any questions about anything discussed in this letter, please call me. You should also feel free to contact an attorney in another firm to discuss the effect of agreeing to the terms of the representation as outlined in this letter.

Village Board Meeting

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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

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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?





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.*



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).

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

Public Comment Policy

Chapter 5

Meeting Procedures

State and local laws control many of the day-to-day functions associated with running a local government. However, when it comes to meeting procedures there are very few rules that must be followed. Unlike other areas of governance, meeting procedures generally fall into the realm of best practices. A good set of meeting procedures is necessary to ensure that meetings of public bodies are efficient and productive.

State law provides only limited guidance with respect to how public bodies, such as boards of trustees, zoning boards of appeals (ZBAs), and planning boards operate and conduct their meetings:

- **Presiding Officer.** Pursuant to Village Law §§ 4-400 & 4-412, the village mayor presides at meetings of the board of trustees. If the mayor is not present at the meeting, then the deputy mayor presides at meetings of the board of trustees.¹ If neither the mayor nor the deputy mayor are present at the meeting of the board of trustees, then the trustees may appoint one of their number to act as deputy mayor during the absence of the mayor and deputy mayor.² For ZBAs and planning boards, Article 7 of the Village Law authorizes the village mayor and board of trustees to appoint one of the ZBA and planning board members to serve as chairperson for their respective board.³ The mayor and board of trustees may change this designation at any time without affecting the term of office of the ZBA or planning board member.
- **Quorum Requirements.** Pursuant to General Construction Law § 41, a quorum of a public body must be present for the body to conduct public business. A “quorum” is defined as a majority of the total authorized membership of the body, regardless of vacancies and absences. Additionally, irrespective of the number of members of the public body present at the meeting, a majority vote of the total authorized membership of the body, without respect to any vacancies and absences, must vote in favor of any given action or proposal.⁴ For example, for a five-member board of trustees, three members constitute a quorum. If only three members of the five-member board of trustees are present at the meeting, all three members must vote in the affirmative for the board to take action on any given issue.
- **Meeting.** A “meeting” is defined in the Open Meetings Law as the official convening of a public body for the purpose of conducting public business, including the use of video conferencing for attendance and participation by the members of the public body.⁵ Public bodies may not hold meetings via telephone/teleconference.
- **Public body.** A “public body” is defined in State law as any entity consisting of two or more members who perform a governmental function and for which a quorum is required to conduct public business.⁶
- **Open Meeting Requirement.** Every meeting of a public body must be open to the general public. Consequently, public bodies must make reasonable efforts to ensure that meetings are held in facilities that can accommodate the anticipated crowd size and permits barrier-free physical access to the physically disabled as defined in Public Building’s Law § 50.⁷

- **Executive Session.** An “executive session” is the portion of a meeting not open to the general public⁸ (see Chapter 6, The Open Meetings Law on page 6.3 for the requirements for holding an Executive Session).
- **Videoconferencing.** A public body that utilizes videoconferencing technology to conduct its meetings must provide an opportunity for the public to attend, listen, and observe at any site at which a member of the public body participates.⁹
- **Noticing of Meetings.** Public Officers Law § 104 sets forth the requirements for noticing meetings of public bodies (see Chapter 6, The Open Meetings Law on page 6.1 on Notice of Meetings).
- **Minutes.** Public Officers Law § 106 outlines the minimum requirements for meeting minutes.

As a result of this limited guidance, it is recommended that each board of trustees, as well as every other public body, adopt rules of procedure for meetings.

GENERAL CONSIDERATIONS

Public bodies may, by resolution, adopt rules of procedure in addition to what is required by State statute as described above. Written meeting procedures provide the board of trustees and the public with an outline of how the meeting will be run. Rules of procedure can help public bodies function effectively and avoid controversy. Even public bodies that function smoothly without rules of procedure should consider adopting written meeting procedures because the difference between a collegial board and an acrimonious, dysfunctional board is an election.

Some villages have adopted *Robert’s Rules of Order*. While *Robert’s Rules of Order* may be helpful for large legislative bodies, most smaller municipalities will find them too complex and too formal to meet their needs. As a general rule, NYCOM does not recommend adopting *Robert’s Rules of Order*. If a public body adopts *Robert’s Rules of Order* as its meeting procedures, it is recommended that at least one member of the board or village be a parliamentarian, fluent in the *Rules* and available to interpret the *Rules* during meetings.

Rules of procedure for meetings should be simple, straightforward, and uncomplicated. At a minimum such procedures should address the following topics:

- Regularly Scheduled Meetings - When and where they are held and how they are cancelled;
- Special Meetings - Who may call them, and when and how the board members must be notified;
- Agendas - Who prepares them, and how and when items can be added and removed from the agenda;
- Minutes - What must be included in the minutes beyond what is required by the Open Meetings Law;
- Order of Business;
- General Parliamentary Procedures - Rules on motions, seconds, debate, etc.;
- Public Comment - Rules such as limiting speakers’ time;

- Rules for the use of recording equipment (e.g., placement of video cameras on tripods); and
- Adjournment.

MEETING VERSUS A PUBLIC HEARING

WHAT IS A PUBLIC HEARING?

Many statutes require the holding of a public hearing before a public body may take a specific action. Perhaps the most well-known public hearing requirement is for enacting local laws.¹⁰ There are, however, many other instances when public hearings must be held, including but not limited to: during the village budget process,¹¹ establishing reserve funds,¹² granting a village franchise,¹³ adopting a comprehensive plan,¹⁴ changing an official map,¹⁵ reviewing site plans,¹⁶ and approving special use permits¹⁷ and subdivision proposals.¹⁸ Despite the myriad requirements to hold a public hearing, there is practically no statutory guidance and very little case law as to what a public hearing is or how to conduct one. Moreover, while there are many statutory references to public hearings, each reference must be read and interpreted individually to determine if there are special requirements for noticing and conducting that particular public hearing.¹⁹

WHY ARE PUBLIC HEARINGS REQUIRED?

The two most important reasons for requiring public hearings are:

- To ensure that the public body or agency charged with taking action on a particular issue is fully aware of the public's sentiment about the proposed action, and
- To give the public an opportunity to voice their concerns, opposition, or support for the proposed action and to bolster the public's confidence in the public body's decision.

To that end, it is frequently interpreted that the requirement of a public hearing grants to the public a "meaningful opportunity" to be heard. It is with these overriding justifications in mind that public hearings must be addressed.

PUBLIC HEARINGS COMPARED TO "MEETINGS"

Pursuant to the Public Officers Law, a meeting is the convening of a quorum of a public body for the purpose of conducting business.²⁰ A public hearing is a meeting of the public body, at which the public must be allowed to comment on the matter that is the subject of the public hearing. This comment requirement differs from regular meetings of public bodies. Pursuant to the Open Meetings Law, the public must be allowed to attend "meetings" of public bodies but has no statutory right to speak or comment at such "meetings," although public bodies may often allow the public to speak at meetings.²¹

MAY RESTRICTIONS BE PLACED ON PUBLIC COMMENT?

In contrast to a public meeting, anyone who wishes to speak at a public hearing must be given the opportunity to do so. However, there are several restrictions that the public body may place upon participation at the public hearing. The public body may, and generally should, limit comments to the topic of the public hearing. In addition, if a large number of individuals appear at the public hearing requesting to speak, the public body may impose **reasonable** time limits. What constitutes "reasonable" will depend on a variety of circumstances, including how many individuals appear to speak and the nature

of the matter that is the subject of the hearing. Note that any restrictions imposed on public comment must be applied equitably and may not discriminate based upon residency. Consequently, it is imperative that rules of procedure be established and announced to the public prior to the commencement of the public hearing.

MUST A QUORUM OF THE PUBLIC BODY BE PRESENT AT A PUBLIC HEARING?

As a general rule, statutes that require public hearings are silent on the issue of whether a quorum of the public body must be present at the public hearing. The statutory silence has led to some confusion and divergent case law on this question. However, unless special circumstances apply, a quorum of a public body must be present at the public hearing for it to be valid.²²

VOTING ON A MATTER AFTER BEING ABSENT FROM A PUBLIC HEARING?

It will frequently occur that one or more members of the public body are unable to attend a public hearing. Members who are absent from public hearings, may, at a subsequent meeting of the public body, nevertheless vote on the matter that was the subject of the hearing. However, the members should review the comments and fully inform themselves about the subject matter before acting on the matter.²³

MUST ORAL COMMENTS MADE AT A PUBLIC HEARING BE RECORDED?

For “meetings” of public bodies (as opposed to “public hearings”), State law requires only that actions of a public body be recorded in the minutes of the body’s meetings.²⁴ Once again, however, statute and case law are silent on the issue of whether oral comments made at a public hearing must be recorded.²⁵ Clearly, public comments, oral or written, are not actions of the public body. Moreover, some public hearing requirements specifically require the hearing to be recorded.²⁶ Consequently, absent a specific statutory requirement, comments made at a public hearing are not required to be recorded. Thus, if a member of the public wishes to have their comment memorialized in writing, they should submit the sentiment in writing.

Note, however, that if a member of the public body is not present at the public hearing but still desires to act on the matter that was the subject of the hearing, the comments should be recorded so that the member may review the comments.²⁷ Unless specifically set forth in State law, the form of the recording must be reasonable. For example, recording a summary of the comments in the minutes of the public hearing would be sufficient. Alternately, the public hearing could be recorded, via either audio or video media.

As previously mentioned, there may be specific statutory provisions that impose requirements to record the comments made at a public hearing. For example, Eminent Domain Procedure Law § 203 requires a record of hearings on proposed condemnations, including comments, to be kept but does not require a village to create a verbatim transcript of the hearing.²⁸

Note also that quasi-judicial hearings that are subject to Article 78 review, such as appeals to a zoning board of appeals, must be recorded either by a stenographer or using audio or video tape so that, if necessary, a certified transcript of the hearing may be made for an Article 78 proceeding.²⁹

ANSWERING QUESTIONS AT THE PUBLIC HEARING

Unless specifically required by statute, members of a public body do not have to answer questions or give analysis at a public hearing, although they may do so. However, to avoid interactions that devolve into never-ending debates or shouting matches, officials may wish to employ a policy whereby board members do not respond to questions at meetings, but request that inquiries be submitted in writing to be responded to at a later date.

SAMPLE RULES OF PROCEDURE

The following are sample rules of procedure for a village board of trustees. **They are meant only to serve as a guideline and should be tailored to the specific needs of each particular public body.** A public body may wish to make its rules of procedure more extensive, but at the very least, any rules of procedures should, at a minimum, address the topics identified in the sample. NYCOM recommends that rules of procedure be adopted via resolution (as opposed to rules adopted via local law).

REGULAR MEETINGS

- The regular meeting of the Board of Trustees will be on the third Tuesday of each month.
- The regular meetings will commence at 7:00 P.M. and be held in the boardroom at village hall.

SPECIAL MEETINGS

- Special meetings of the Board of Trustees are all those Board meetings other than regular meetings.
- A special meeting may be called by the Mayor or any Trustee upon notice to the entire Board.
- Notice may be given to Board members by telephone, in person, email, or in writing at least 72 hours in advance unless an emergency exists.

QUORUM

- A quorum of the Board of Trustees must be present to conduct business.
- A quorum of the five-member Board of Trustees is three members.

EXECUTIVE SESSIONS

- Executive sessions will be held in accordance with Public Officers Law § 105.
- All executive sessions will be entered into from a properly noticed and convened public meeting.

AGENDA

- The agenda of every Board of Trustees meeting will be prepared by the Clerk at the direction of the Mayor.
- The Mayor or any Trustee may have an item placed on the agenda on at least 24 hours' notice.
- When possible, items for the agenda must be given to the Clerk by 4:00 P.M. the day prior to the meeting.
- Items may be placed on the agenda at any time, including during the meeting by a majority vote of the Board.
- The agenda will be prepared and emailed to Board members no later than 5:00 P.M. the day before the meeting.
- If necessary, a supplemental agenda may be distributed at the beginning of the meeting.

VOTING

- Pursuant to Village Law, each member of the Board of Trustees has one vote. The Mayor may vote on any matter, but must vote in case of a tie.
- A vote upon any question will be taken by "yes" and "no."
- When taking votes, the Clerk must record in the minutes for each Trustee whether they voted yes, voted no, abstained from voting, or were absent. Abstentions and absences are not counted as votes. Abstentions and absences are neither positive nor negative votes; they are simply no vote at all.
- For the purposes of determining whether a matter passed, the Clerk must tally the number of "yes" votes.
- Unless otherwise specified by State law, a majority of the totally authorized voting power of the Board must vote "yes" for any matter to pass.

MINUTES

- Minutes will be taken by the Clerk.
- Minutes must consist of a record of all motions, proposals, resolutions, and any other matter formally voted upon and the vote thereon.
- Minutes must be taken at executive session of any vote taken and must consist of a record of the final determination of the action, and the date and vote thereon.
- Minutes must include the following:
 - The name of the Board;
 - The date, place, and time of the meeting;
 - Notation of whether a Board member is present or absent, and the Board member's time of arrival or time of departure if different from the time the meeting was called to order and adjourned;
 - The names and titles of other village officials and employees present and the approximate number of attendees;
 - A record of communications presented to the Board;
 - A record of reports made by the Board or other village personnel;
 - The time the meeting is adjourned; and
 - Signature of Clerk or person who took the minutes if not the Clerk.

- Minutes must be approved by the Board at its next meeting and may be amended only by a majority vote of the Board.³⁰

ORDER OF BUSINESS

- Call to order;
- Roll call;
- Approval of previous meeting's minutes;
- Report of officers and committees (list);
- Public comment period;
- Old business;
- New business;
- Appropriations;
- Auditing; and
- Adjournment.

GENERAL RULES OF PROCEDURE

- The Mayor presides at the meeting. In the Mayor's absence, the Deputy Mayor presides.
- The presiding officer may debate, make motions, and take any other action that other Board members may take.
- Board members are not required to rise but must be recognized by the presiding officer before making motions and speaking.
- Motions require a second.
- A member, once recognized, may not be interrupted when speaking unless it is to call him or her to order. If a member is called to order, they must cease speaking until the question of order is determined. If the member is in order, he or she may proceed.
- A member may not be limited in the number of times he or she speaks on a question.
- Motions to close or limit debate require a two-thirds vote.

GUIDELINES FOR PUBLIC COMMENT

- The public may speak only during the meeting's Public Comment period and at any other time a majority of the Board allows.
- Individuals wishing to speak during the Public Comment period must sign in.
- Speakers must be recognized by the presiding officer.
- Speakers must step to the front of the room/microphone.
- Speakers must give their name, address and organization, if any.
- Speakers must limit their remarks to five minutes (this time limit may be changed to accommodate the number of speakers).
- Speakers may not yield any remaining time they may have to another speaker.
- Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.

- All remarks must be addressed to the Board as a body and not to individual Board members.
- Speakers must observe the commonly accepted rules of courtesy, decorum, dignity, and good taste. Interested parties or their representatives may also address the Board by written communications.

GUIDELINES FOR USE OF RECORDING EQUIPMENT

- All members of the public and all public officials are allowed to tape or video record public meetings.
- Recording is not allowed during executive sessions.
- The recording must be done in a manner which does not interfere with the meeting.
- The Mayor may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to brightness of lights, distance from the Board, size of the equipment, the amount of noise generated by the activity, and the ability of the public to observe the meeting.
- If the Mayor determines that the recording is interfering with the meeting, the Mayor may request the individual alter their behavior to eliminate the interference. If the Mayor's request is not complied with, the Mayor may have the individual removed from the meeting room.
- The Board has the authority to adopt reasonable rules governing the use of cameras and recording devices during open meetings and those rules must be written, conspicuously posted, and provided to those in attendance upon request.³¹

ADJOURNMENT

- Meetings must be adjourned by motion.

AMENDMENTS TO THE RULES OF PROCEDURE

- The foregoing procedures may be amended at any time by a majority vote of the Board.

¹ See, Village Law § 4-400(1)(h).

² See, Law § 4-400(2).

³ See, Village Law §§ 7-712(2) and 7-718(1) respectively. Note that this statutory language is frequently the source of confusion regarding the appointment of ZBA and planning board chairpersons. NYCOM recommends that Village Law §§ 7-712(2) and 7-718(1) be interpreted as providing for the designation of one ZBA and planning board members to serve as chairperson not the appointment of a chairperson to a fixed term of office.

⁴ General Construction Law § 41.

⁵ Public Officers Law § 102(1).

⁶ Public Officers Law § 102(2); see also, General Construction Law § 41.

⁷ Public Officers Law § 103.

⁸ Public Officers Law § 102(3).

⁹ Public Officers Law § 103(c).

¹⁰ Municipal Home Rule Law § 20(5).

¹¹ Village Law § 5-508(3).

¹² General Municipal Law §§ 6-d, 6-f, and 6-r.

¹³ Village Law § 4-412(6).

GUIDELINES FOR PUBLIC COMMENT

- The public may speak only during the Public Comment period of the meeting or at such other time as a majority of the Board allows.
- Speakers must step to the front of the room.
- Speakers must give their name, address and organization, there shall be an exemption for any category of people protected by NYS Law.
- Speakers must be recognized by the presiding officer. Speakers must limit their remarks to three minutes on a given topic.
- Speakers may not yield any remaining time they may have to another speaker.
- Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.
- All remarks must be addressed to the Board as a body and not to any member thereof.
- Speakers must observe the commonly accepted rules of courtesy, decorum, dignity and good taste.
- Interested parties or their representatives may address the Board by written communications.
- The distribution of printed materials or another media, must be submitted only to the Village Board and not the General Public. Private distribution of the materials to audience members is prohibited.

GUIDELINES FOR PUBLIC COMMENT DURING PUBLIC MEETINGS

- A comment period will be reserved for the public starting at 6:15 pm at the beginning of each Board of Trustee Meeting. Those wishing to comment will be limited to a single speaking period of not more than 3 minutes.
- The Public may pre-register to speak with the Village Clerk prior to noon on the meeting day.
- All public comments will address only those items set forth on the agenda for that evening.
- Interested parties or their representatives may address the Board by written communications which will be entered into the record for the meeting.
- All written comments must be submitted, in advance, to the Village Clerk on the day of the meeting by Noon.
- Speakers must observe the commonly accepted rules of courtesy, decorum, dignity, and good taste.
- Speakers must be recognized by the presiding officer.
- All remarks must be addressed to the Board as a body and not to any individual member.
- Public Comment will not be in the form of a Question /Answer period.
- Speakers must step to the front of the room.
- Speakers must give their name, address, and organization, if any.
- Speakers may not yield any remaining time they may have to another speaker.
- Board members may, with the permission of the mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.
- The distribution of printed materials or any other media, must be submitted only to the Village Board and not the General Public.
- Private distribution of printed materials to audience members is prohibited.

Public Comment

We'll have opportunities to comment live and in real time throughout the meeting tonight. If you're a resident of the Town of Pittsford, if you own property or a business in Pittsford and pay Pittsford Town taxes, if you are an attorney or agent for a resident designated to speak on the resident's behalf, you may comment by signing in with Ms. Reddick and you'll be called upon in the order in which you signed in. Or you may submit a comment by email to *comments@townofpittsford.org* and it will be read by the Town Clerk.

Comments need to be kept to 2 minutes. You'll have opportunities to comment on specific agenda items and also on general matters at the end. **Please begin with your name and address.**

Any resident can comment once in each comment window if it's on a specific agenda item. And please remember this is *our* opportunity to hear from *you*. It is not a debate, a deposition or a panel discussion. It's the Board's chance to hear *at this meeting* from the people we represent, in addition to the numerous messages and phone calls we at Town Hall receive from residents every day of the week. We will listen to you make your points.

And we ask all commenters to be respectful.

public hearing on proposed local law #2, "adopting revised code of ethics". Full packet, including participation details, here:

<https://townofpittsford.org/file...> See More

TOWN BOARD AGENDA

Wednesday, September 8, 2021 – 6:00 pm

Town Hall – 11 S. Main Street, Pittsford – Lower Level

Page 1 of 2

Call to Order

Pledge of Allegiance

Public Hearing: Proposed Local Law No. 2: Adopting Revised Code of Ethics

Minutes

Approval of Minutes of Meeting of August 17, 2021

Financial Matters

Public Comment

Surplus

Personnel Matters

Public Comment

Hiring Resolution

Other Business

Public Comment

Adjournment



MEMO

To: Board of Trustees of the Village of Pittsford

From: Dorothea M. Ciccarelli and Jeffrey L. Turner, Esq.

Date: July 2, 2021

Re: Open Meeting Public Comment Policy

Dear Mayor and Trustees:

Dorothea and I have been increasingly concerned over the past several months with two issues that have arisen with regard to Board of Trustee meetings.

The first of those issues is the current system for public comment during Trustee meetings. We feel that accepting comment from the public during each agenda item is negatively impacting the ability of the Board of Trustees to accomplish the necessary work of government in an efficient manner during its regularly scheduled meetings.

While it is extremely important for the residents of the Village to be able to express their opinions on any given issue to the Board of Trustees, it is the obligation of each individual member of the Board of Trustees to exercise their respective best judgment regarding what is in the best interest of the Village, regardless of whether that decision has popular support. As strange as it sounds to say it, you were elected to represent the best interests of the Village, not the wishes of the public.

The current system for accepting public comment during Board of Trustee meetings appears to be getting in the way of good and efficient government.

Our thought was to come up with a policy that allows for public comment and input regarding items that had been placed on the agenda for each Board of Trustee meeting, but at the same time allows the work of government to proceed in a more orderly fashion.

Attached is a chart prepared by Dorothea after her conversations with various Village Clerks which summarizes the public comment policies of other Villages in the area.

In addition, discussions with NYCOM have indicated that those wishing to comment publicly at a Trustee meeting (other than members of the public who comment at a public hearing) should submit their comments in writing in advance of the meeting.

Our proposal is that there be a public comment period at the beginning of each Board of Trustee meeting where each speaker is limited to a single 3-minute maximum comment period which comments must be in connection with only agenda items and must be submitted in advance of the Board meeting. Our further suggestion would be to start the meetings at 6:15 provided that a quorum of Board of Trustee Members is available at that time. Aside from the comment period which is to occur at the beginning of each meeting, no further public comment will be accepted unless such public comment is submitted as part of an actual public hearing.

In addition, we were wondering about the possibility of an additional workshop session each month where Village residents would have the opportunity to discuss with the Trustees any and all Village issues. There would be no agenda for this meeting.

Our final thought on this issue is that Board Members should explore the possibility of set office hours or phone hours and individual Facebook pages to facilitate receiving input from the residents of the Village.

Attached to this memorandum is a proposed public comment policy.

The second issue has been in the back of each of our minds for a much longer period of time. That issue is member items. We are both uncomfortable with the concept of un-agendaed member items being discussed and acted upon during a meeting. That process fails to provide adequate notice to the public. In addition, the current process does not provide Board Members with advance notice of and the ability to prepare for discussion and action with regard to those unagendaed member items.

We have been in touch with NYCOM on this issue as well, and counsel for NYCOM has indicated to us that provided that Board Members do have the opportunity to add items to an agenda, then the use of unagendaed member items is not best practice.

Our suggestion in this regard is that if a Board Member has a matter they wish to discuss and have action on, then it should be placed on the agenda as a regular agenda item so that both the general public and Board Members win have notice.

Respectfully submitted,

Dorothea M. Ciccarelli
Village Clerk

Jeffrey L. Turner, Esq.
Village Attorney

Jeffrey Turner

From: Dorothea <VillageClerk@villageofpittsford.com >
Sent: Friday, June 18, 2021 1:33 PM
To: Jeffrey Turner
Subject: Public Comment other Villages

Jeff,

See below:

Village	Public Comment Period	When	Speaker Time Limit
Brockport	Yes	Beginning	<i>NIA</i>
Churchville	Yes	End	3 minutes
East Rochester	Yes	Beginning	5 minutes
Fairport	Yes	Beginning	<i>NIA</i>
Hilton	Yes	Beginning	<i>NIA</i> - Unless comment goes to long
Honeoye Falls	Yes	Beginning	<i>NIA</i>
Scottsville	Yes	Beginning	3 Minutes
Spencerpot	Yes	Beginning	<i>NIA</i>
Webster	Yes	Beginning	5 minutes

Dorothea M. Ciccarelli
Village Clerk
Village of Pittsford
21 N. Main Street
Pittsford, NV 14534
585-586-4332

Village of Pittsford
Board of Trustee Meeting
Public Comment Policy

- There will be a public comment period at 6:15 pm at the beginning of each Board of Trustee Meeting. Those wishing to comment will be limited to 1 speaking period of 3 minutes. All such comments will be limited only to those items set forth on the agenda for that evening and must be submitted in writing by _____ to the Village Clerk in advance of that meeting.
- No additional verbal or written public comments will be accepted unless such comments occur during a public hearing.

Board of Trustees
Village of Pittsford

From: [Bewlay, Shoshanah \(DOS\) \(Shoshanah.Bewlay@dos.ny.gov\)](mailto:Shoshanah.Bewlay@dos.ny.gov)
To: villageclerk@villageofpittsford.com
Cc: dos.sm.Coog.InetCoog
Subject: RE: Model Rules for Public Comment
Date: Monday, August 2, 2021 2:39:15 PM

Dorothea:

Thanks for your inquiry! It was a pleasure to speak with you.

While we don't have model rules for public bodies to implement concerning the parameters for public comment, we have [opined](#) that:

Within the language of the Open Meetings Law, there is nothing that pertains to the right of those in attendance to speak or otherwise participate. Certainly a member of the public may speak or express opinions about meetings or about the conduct of public business before or after meetings to other persons. However, since neither the Open Meetings Law, nor any other statute of which we are aware, provides the public with the right to speak during meetings, we do not believe that a public body is required to permit the public to do so during meetings. Certainly a public body may permit the public to speak, and if it does so, it has been suggested that rules and procedures be developed that regarding the privilege to speak that are reasonable and that treat members of the public equally. From our perspective, a rule that allows certain members of the public to speak while prohibiting others from speaking at all would be unreasonable and subject to invalidation.

Based on this advice, many public bodies (towns and villages) have implemented rules of conduct for public comment and other aspects of the conduct of open meetings, and some of these rules may be publicly available on those websites. See, for example:

Geddes:

<http://townofgeddes.com/wp-content/uploads/2019/12/Rules-of-Conduct-2020.pdf>

Cochecton:

https://townofcochectonny.org/wp-content/uploads/Rules_of_Conduct_for_Public_Meetings.pdf

Vestal:

https://www.vestalny.com/document_center/Clerk/Vestal_Meeting_Code_of_Conduct.pdf

I hope these materials are of assistance.

Best,

Shoshanah Bewlay
Executive Director

New York State Committee on Open Government

99 Washington Avenue, Suite 650

Albany, NY 12231-0001

(518) 474-2518

Shoshanah.Bewlay@dos.ny.gov

<https://opengovernment.ny.gov/>

From: Dorothea <VillageClerk@villageofpittsford.com>

Sent: Monday, August 2, 2021 1:03 PM

To: dos.sm.Coog.InetCoog <dosCOOG@dos.ny.gov>

Subject: Model Rules for Public Comment

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Good Afternoon,

Thank you so much for returning my call and the advice related to public comment.

I would appreciate if you could forward any model rules for the public to speak.

Thank you,

Dorothea M. Ciccarelli

Village Clerk

Village of Pittsford

21 N. Main Street

Pittsford, NY 14534

585-586-4332