

# Land Use Issues Related to Cannabis

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# Overview

- State Licensing Notification to municipalities / Response
- Complaints/Enforcement
- Local Land Use Regulation

# Cannabis Definitions

“Cannabis” means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp.

“Cannabis Retail Dispensary” means any person or business that engages in the Retail Sale of Cannabis Products, the sale of which requires the issuance of a license under the provisions of New York State Law.

“Retail sale of Cannabis Products” means to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell, made by any licensed person, whether principal, proprietor, agent, or employee, of any Cannabis or Cannabis Products.

“Cannabis Products” means cannabis, concentrated cannabis, and cannabis-infused products for use by a consumer.

# Notifications to Local Municipalities

Pursuant to Section 76 of the Cannabis Law, not less than thirty days nor more than two hundred seventy days before filing an application for licensure as an adult-use ***retail dispensary*** or registered organization adult-use ***cultivator*** processor distributor retail dispensary or an ***on-site consumption*** licensee, an applicant shall notify the municipality in which the premises is located of such applicant's intent to file such an application.

# Notifications to Local Municipalities

This notification has to be made by:

- certified mail, return receipt requested;
- overnight delivery service with proof of mailing; or
- personal service upon the offices of the clerk or community board

# Renewal Applications Require Notice As Well

An adult-use cannabis license is valid for two years after the date it is issued and can be renewed every two years. Cannabis Law requires that the applicant notify the Municipality or Community Board for license renewal. (See Cannabis Law Section 76(6)(f)).

# Municipal Response to Notification

The local municipality should respond if they have an opinion, they would like to share with the Cannabis Control Board about the notification they receive.



Office of Cannabis Management (Office)  
Cannabis Control Board (Board)

[Municipality Frequently Asked Questions](#)

# Municipal Response to Notification

## State Requirements for Adult-Use Retail Dispensary Licensees

*Information to be disclosed on our website that will address what OCM will be reviewing when reviewing an adult-use application or licensee*

### Introduction

The Office of Cannabis Management (the Office) has set forth a comprehensive application and review process for those looking to obtain an Adult-Use Retail Dispensary license in the state of New York.

This document intends to serve as an overview of some of the components that the Office reviews during the application process that may be of particular interest to local municipalities, including New York City Community Boards.

### Expressing an Opinion

Per Section 76 of Cannabis Law, local municipalities, including cities, towns or villages, and in the case of New York City, Community Boards, have the ability to express an opinion for or against the granting of licenses for adult-use cannabis dispensaries and/or on-site consumption sites. The expressed opinion of the municipality will then become part of the application record upon which the Office makes its recommendation to the Cannabis Control Board to grant or deny a license.

When expressing an opinion on an application, please include the following information in your submission to the Office:

- OCM Application ID Number
- Business Legal Name
- Name of the Applicant (Individual or Entity)
- In detail, reasons for recommending the granting or denying of the license



# Municipal Response to Notification

## Dispensary Approval Factors:

- Classes and character of other licenses in proximity to the location and in the particular municipality or subdivision
- Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.
- Whether there is a demonstrated need for such license.
- Effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the location.
- The existing noise level at the location and any increase in noise level that would be generated by the proposed premises.
- 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.

## Is there a limit to the number of licenses that will be issued in one municipality?

No.

The Board has the sole discretion to limit or not limit the number of licenses per class to be issued in the State or any political subdivision thereof. (See Cannabis Law Section 10(2)).”

# The Office reviews the following:

Before any final license is awarded the Office reviews the following:

- The opt-out status of the municipality in which the proposed dispensary is located;
- The distance from an existing medical dispensary;
- The distance from any existing or proposed adult-use dispensaries;
- Whether there is a house of worship on the same road and within 200-feet; and
- Whether there is a school on the same road and within 500-feet.
- 119.2 – prior existing use concept

# Proximity to Other Dispensaries

Proximity to other dispensaries. Unless explicitly approved otherwise by the Office, a dispensary cannot be located anywhere within a certain radius of another premises that is already licensed as an adult-use retail dispensary or is a [medical cannabis dispensing facility](#) operated by a registered organization (RO). The size of that radius depends on the population of the city, town, or village that the new dispensary will be located in and is based upon the most recent American Community Survey (ACS) 5-year estimate of that municipality's population.

City, Town, or Village Population	Radius
20,000 or more	1,000 feet
Less than 20,000	2,000 feet

# Complaints/Enforcement

- Reporting Violations to the State
- Local Enforcement Options

# Complaints/Enforcement

**Enforcement**: Municipalities may relay to the state and/or local enforcement information about activities that may be in violation of the Cannabis Law. Suspected violations or complaints can be reported online.

# Will OCM oversee what products are being retailed to ensure the quality of the products?



## Office of Cannabis Management

### Incident Reporting Form

#### Incident Reporting Form

Please notify the NYS Office of Cannabis Management with concerns you may have about:

- an adverse event (an unwanted medical reaction or problem from using a cannabis product)
- a cannabis product or package (such as a broken seal or other product safety concern)
- a cannabis business (such as an unlicensed retailer or an incident at a cannabis business location) you would like to report

Please fill out this form as completely as possible. Any information submitted in this form is encrypted and stored securely.

Select the type of incident you are reporting. \*

- Adverse Event (any unwanted medical reaction or problem from using a cannabis product)
- An issue with a cannabis product or package
- A concern about a cannabis business

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Should a community board or municipality have cause to suspect the quality of cannabis products being sold, the community board or municipality may report the following using the Incident Reporting Form.

# Complaints/Enforcement

**Complaints**: Whenever possible please include the following information when submitting a complaint:

- Name of business
- Time of alleged illicit activity
- Location of alleged illicit activity
- Pictures of alleged illicit activity
- Indicate if there has been previous police contact (i.e., 911 calls)
- Proximity to sensitive use locations (e.g., school, house of worship)
- Contact information of the person reporting the alleged illicit activity (i.e., phone number in case there are follow up questions).



# Outdoor Signage

Licensees authorized to conduct retail sales to consumers may advertise outdoors using signs, provided such signs:

- are for the purpose of alerting individuals to the location of a retail dispensary authorized to sell cannabis products to consumers;
- are limited to, at a maximum, the following information: licensee's name, entity name, or doing business as name; dispensary address, phone number, email address and website URL; and the nature of the business;
- are affixed to a building or permanent structure;
- are not on vehicles; and
- do not total more than two in number per licensed premises.
- Marketing or advertising is prohibited on any signs and placards, regardless of their size or purpose, in arenas, stadiums, other sport venues, shopping malls (unless alerting individuals to the location of a retail dispensary located within that mall), fairs that receive state allocations, and video game arcades.

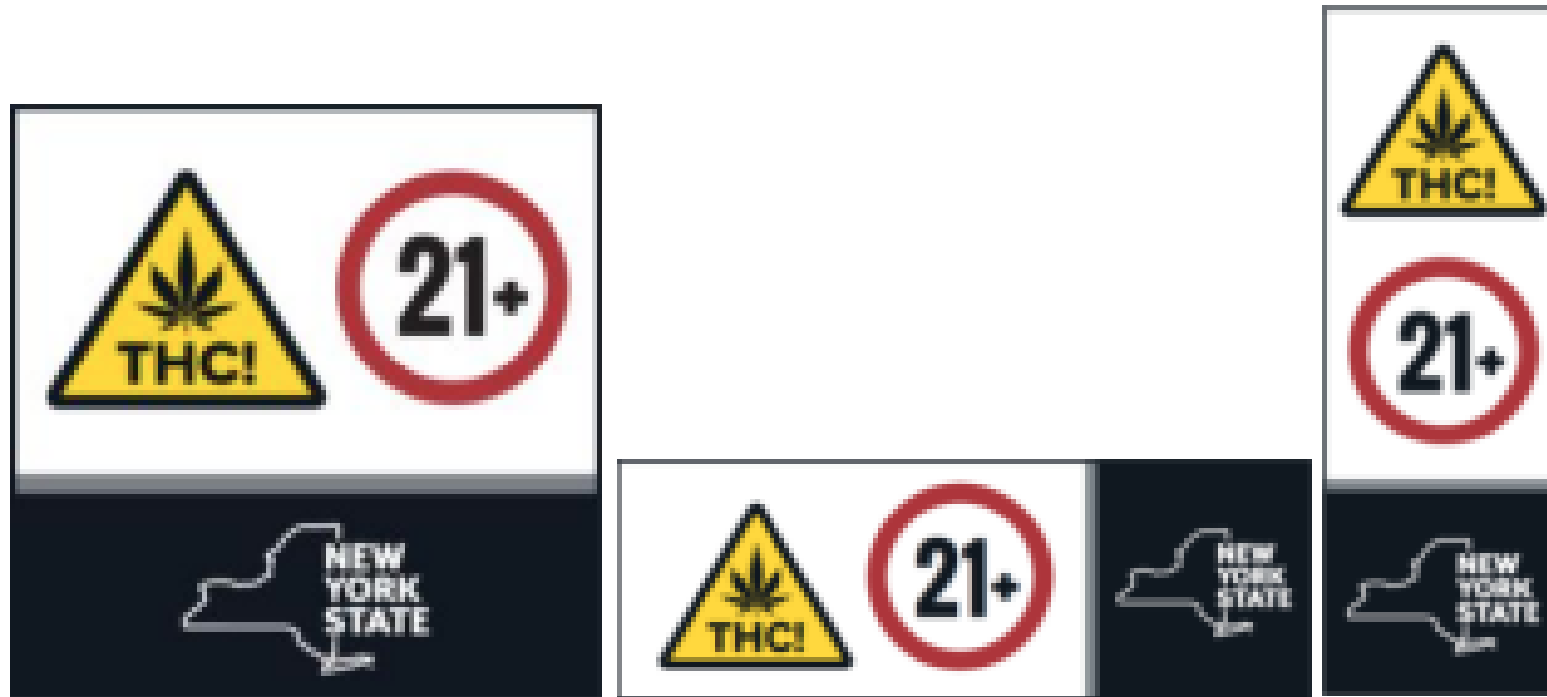
# Advertising Prohibitions

- depict noncompliant cannabis products;
- use or display images/audio designed in any manner to be attractive to individuals under twenty-one (21);
- use or display colloquial references to cannabis or depictions of cannabis, cannabis products, paraphernalia, or the imagery or action of smoking or vaping;
- promote price, price reductions, coupons or any other discount, customer loyalty program;
- assert that cannabis or cannabis products are safe;

# Advertising Prohibitions

- May not: advertise through free promotional items including, but not limited to, gifts, giveaways, discounts, points-based reward systems, customer loyalty programs, coupons, and "free" or "donated" cannabis products,
- except for: the provision of branded exit packages by a licensee for the benefit of customers after a retail purchase is completed, the provision of free promotional items as part of an environmental sustainability program pursuant to the retail packaging sustainability program under Section 128.4(a), or otherwise approved by the Office; or use a commercial mascot.

# Packaging



# Security Plan

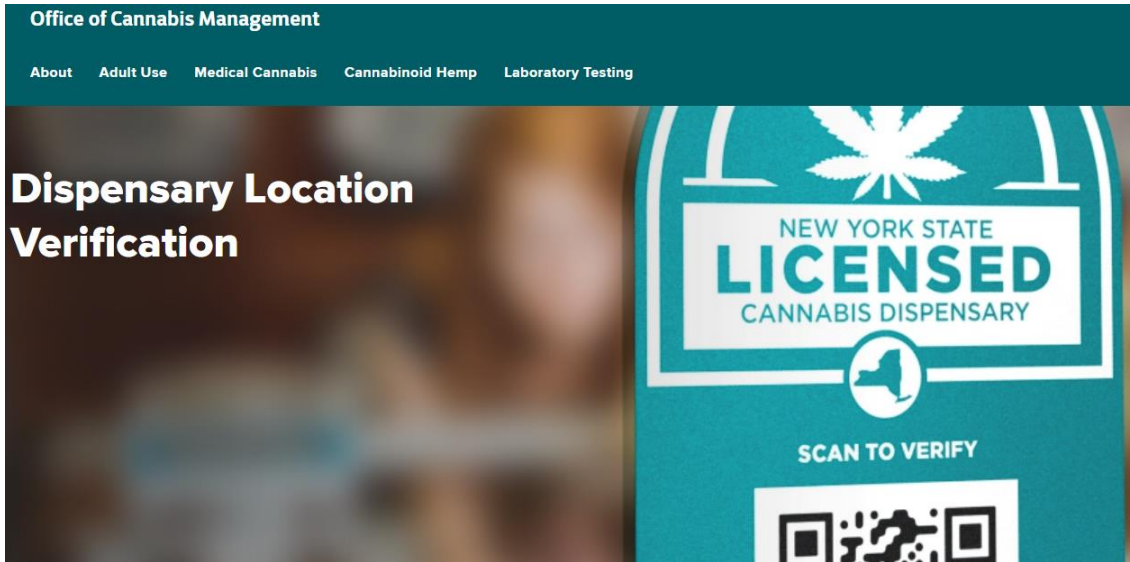
- Prevent loitering and ensure that only individuals engaging in activity expressly or by necessary implication permitted by the Cannabis Law are allowed to remain on the premises of the licensee;
- Ensuring that both the inside, and the outside perimeter of the licensed facility are sufficiently illuminated to facilitate surveillance (video cameras required); and
- Maintaining trees, bushes and other foliage outside of the licensed premises so as to prevent a person from concealing themselves from sight.

## Can a deli, gas station, etc., have a dispensary within the establishment?

- A retail dispensary cannot sell food, beverages, or personal care items that are not cannabis products (See 9 NYCRR §123.10(g)(11)(iv))

# Legal vs. Illegal Dispensaries

## Dispensary Location Verification



Dispensary Name	Address	City	State	Zip	Status/Website
Upstate Canna Co	1613 Union Street	Schenectady	NY	12309	<a href="https://upstate-canna.co/">https://upstate-canna.co/</a>
Dazed	33 Union Sq. W	New York	NY	10003	Temporarily Closed
Essential Flowers***	-	Albany	NY	-	<a href="https://legacydispensers.com">https://legacydispensers.com</a>
Gotham CAURD LLC	3 E 3rd Street	New York	NY	10003	<a href="https://gotham.nyc">https://gotham.nyc</a>
The Cannabis Place***	-	Queens	NY	-	<a href="https://thecannabisplace.org">https://thecannabisplace.org</a>
Stage One Cannabis LLC	810C Broadway	Rensselaer	NY	12144	<a href="https://stageonedispensary.com/">https://stageonedispensary.com/</a>
Flynnstoned Corporation	219 Walton Street	Syracuse	NY	13202	<a href="https://flynnstoned.com/">https://flynnstoned.com/</a>
Half Island Flavors LLC***	-	Bronx	NY	-	<a href="https://myseashnyc.com/">https://myseashnyc.com/</a>
Greenery Spot LLC	246 Main Street	Johnson City	NY	13790	<a href="https://www.greeneryspot.com/">https://www.greeneryspot.com/</a>
Royal Leaf NY LLC	817 E Tremont Avenue	Bronx	NY	10460	<a href="https://statisccannabis.com/">https://statisccannabis.com/</a>
Strain Stars LLC	1815 Broadhollow Road	Farmingdale	NY	11735	<a href="https://strainstersny.com/">https://strainstersny.com/</a>
Exscape INC (dba Sacred Bloom)	1308 Vestal Pkwy E, 1st Floor, Set D	Vestal	NY	13850	<a href="https://sacred-bloom.com/">https://sacred-bloom.com/</a>
Dank 716 LLC	501 Main Street	Buffalo	NY	14203	<a href="https://716dank.com">https://716dank.com</a>

# What is an illegal cannabis business?



## **Is the sale of cannabis legal through a 'gifting' loophole in the MRTA?**

No. Unlicensed cannabis sales remain illegal in New York. As the NYS Office of Cannabis Management (OCM) announced, "Recent media reports have described business operators selling a product or service, including club memberships, to consumers and providing cannabis as a "gift" in return. This activity is illegal. These violators must stop their activity immediately or face the consequences." Among those consequences, OCM has announced that violators will "risk the opportunity to get a license in the legal market as well as substantial fines and possible criminal penalties." OCM is seeking reports of violators to the OCM enforcement function, and IPD will report unlicensed cannabis sales in the city to OCM. For more information, see <https://cannabis.ny.gov/news/office-cannabis-managementannounces-enforcement-action>



**Even Ithaca thinks so!**

**Pot Town, NY**

**POLITICO**

# 2023 State Budget

The word "Forbes" is written in a white, serif font on a black rectangular background.

dispensaries in New York City. The legislation empowers the Office of Cannabis Management (OCM) and the Department of Taxation and Finance (DTF) to assess civil penalties against cannabis storefronts and vending trucks engaged in the unlicensed selling of cannabis and cannabis products. The OCM will be able to assess civil penalties against unlicensed cannabis businesses, with fines of up to \$20,000 a day for the most egregious offenders. Additionally, the DTF will be allowed to conduct regulatory inspections to determine if proper taxes are being paid by businesses selling cannabis products, as well as businesses that sell or give cannabis in indirect ways, including “sticker shops” or gifting schemes that include what is ostensibly a gift of cannabis with the purchase of inexpensive merchandise.

# State Enforcement



Enforcement Actions Have Resulted in Seizure of a Minimum of 1000 Pounds and Nearly \$11 Million in Illicit Products Through Coordinated Interagency Effort

... but maybe not

MARIJUANA

# State Cannabis Agency Pauses Trials for Unlicensed Shops

*While Gov. Hochul talks about cracking down, the Office of Cannabis Management has quietly suspended its enforcement hearings, THE CITY has learned, even as it keeps raiding illegal storefronts.*

BY ROSALIND ADAMS | OCT. 27, 2023, 5:31 P.M.

# Local Enforcement Ideas

- Local Police
- Nuisance Laws
- Zoning/Land Use Violations

# Nuisance Laws are controversial

- Define public nuisance
- Give notice of violations
- Some sort of waiver process for settlements
- Adjudication procedure to protect due process rights

**It is still against the penal law to sell without a license.**



## **New York Prosecutor Begins Crackdown on Illegal Cannabis Shops With \$400K Deal With Shop Owner**

Manhattan District Attorney Alvin Bragg says he and other city officials have begun cracking down on illegal cannabis shops

By [Associated Press](#) | July 18, 2023, at 2:52 p.m.

# Landlords could be liable

Assemblymember Grace Lee, Senator Brian Kavanagh, Local Community Leaders Hold Press Conference Addressing Illegal Cannabis Stores in Lower Manhattan

BRIAN KAVANAGH | October 19, 2023 | ISSUE: CANNABIS LEGALIZATION





# New York City is taking action against landlords



New York City Council

## **In Response to Explosion of Unlicensed Smoke Shops in NYC, Council Members, Real Estate Officials Announce New Law Taking Effect to Curb Illegal Stores**

*August 14, 2023*

**New York, NY** - Council Member Lynn Schulman, lead sponsor of legislation to hold commercial landlords responsible for renting storefronts to unlicensed smoke shops, was joined by several officials to announced the new law had taken effect. [Introduction 1001-B](#), now known as Local Law 107 of 2023, prohibits owners of commercial spaces from knowingly leasing to unlicensed sellers of marijuana or tobacco products, imposing fines of up to \$10,000 on landlords for violations.

# Local Regulation

- Opt-in / Opt-out
- Pre-emption
- Options
- Hours
- Acceptable time/place/manner restrictions

## Opt-in / Opt-out

Pursuant to the Cannabis Law, cities, towns, and villages, which had previously passed a local law seeking to prohibit adult-use cannabis retail dispensaries and/or on-site consumption businesses, may repeal that local law, allowing for the possibility to host these licensees in their municipality. To do this, a municipality must pass a new local law repealing the opt-out law which established the prohibition.

# Opt-outs



## Marijuana Opt-Out Tracker

Join us to opt out of adult-use marijuana dispensaries and/or on-site consumption lounges in their jurisdiction. NOTE: While this Tracker presents real-time, official information on municipalities' opt-out decisions. Please see the write-up below for more information.

[Sign up to receive our newsletter](#)

### Now that the deadline is passed...

...we are confirming the status of municipalities with an asterisk in the dispensary and consumption site columns. While it is true that a municipality that did not choose to opt out of the retail marijuana market by 12/31 is automatically opted in, an asterisk in this Tracker does not necessarily assume an opt in. As we confirm, we are updating the status to be 'Yes' or 'No.'

**0**  
DAYS LEFT

Dispensary Opt Outs

**753** / 1,520

Municipalities

Consumption Site Opt Outs

**877** / 1,520

Municipalities

# Pre-emption

- Pursuant to section 131 of the Cannabis Law, municipalities are preempted from adopting any local law, rule, or prohibition pertaining to the operation, registration, licensure, or permitting of a registered organization, adult-use cannabis license or cannabinoid hemp license

# Acceptable local regulations

- Municipalities are authorized to adopt local laws and regulations governing the time, place, and manner; provided however, that such local laws and regulations shall not be ***unreasonably impracticable***.
- Site Plan Approval
- Special Use Permits

## Public youth facility - option

- Municipalities are authorized to adopt local laws regarding distance requirements between the retail dispensary, microbusiness, or ROD and a public youth facility,
- provided, however, that such distance requirement is no greater than 500 feet from the retail dispensary, microbusiness, or ROD.

# Retail hours of operation

- (i) shall not be from 2:00 a.m. to 8:00 a.m., unless given express written permission by such municipality, or the municipality passes a local law, authorizing it to operate during such hours; and
- (ii) shall not be restricted to less than seventy (70) hours a week, unless the licensee agrees to do so;



# On site consumption hours

- (i) shall not be allowed to operate from 4:00 a.m. to 8:00 a.m.;
- (ii) shall not restrict operations to less than seventy (70) hours a week, unless the licensee agrees to do so;

# Acceptable local regulations

- the visual or architectural integrity of the building if located within historical districts;
- parking;
- traffic control, including, but not limited to, pedestrian and vehicular traffic;
- odor, except as preempted;
- noise; and
- distance requirements between the retail dispensary, microbusiness, or ROD and a public youth facility, provided, however, that such distance requirement is no greater than 500 feet from the retail dispensary, microbusiness, or ROD.

# Visual Impact

- The visual or architectural integrity of the building if located within historical districts
- Site Plan or Special Use permit approvals may still require visual simulations and consideration of impacts on historic resources

# Parking

- Enhanced parking requirements may be a good idea in the context of stand-alone buildings to prevent cueing into traffic.
- Where a dispensary is in a walkable or more built environment that may not be necessary or desirable.
- Thus, parking requirements may be enhanced but should be zone specific.

# Traffic control

- Safe ingress and egress should be considered
- Pedestrian safety and access to public transportation are reasonable considerations

# Odor / Noise

- Municipalities should consider enhanced screening and setback requirements depending on the zone.
- For example, if the business is going to be highly trafficked and is near single-family residential uses, it may be necessary to mitigate impacts with screening and setbacks.