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MEMORANDUM

TO: The People of New York
FROM: Matthew D. Levy, Esq., Legislative Director
DATE: September 30, 2021; Amended April 12, 2022
RE: Cannabis Law Updates

SUMMARY

This memo contains information regarding the legalization of adult use cannabis, the formation of the Cannabis Control Board (the “Board”) and the Office of Cannabis Management (“OCM”), the members of the Board and the OCM, the powers and duties of the Board and OCM, the types of adult-use licenses, the tax structure for adult-use products, and regulatory updates. This memo will be updated as the regulatory structure gets made.

CANNABIS LAW

Marihuana Regulation and Taxation Act

The Marihuana Regulation and Taxation Act (the “MRTA”) legalized adult recreational use of cannabis in New York.¹ The MRTA created the OCM and the Board, which would be placed under the State Liquor Authority (“SLA”); however, the SLA would have no involvement in the operations of the Cannabis program.

Cannabis Control Board

The Board has five members. The chairperson is nominated and two other members are appointed by the Governor; one member is appointed by the Temporary President of the Senate; and one member is appointed by the Speaker of the Assembly.² The appointment terms are for 3 years and members, to the extent practicable, need to reflect the geographic and demographic diversity of the State.³ The chairperson must be confirmed by the Senate.⁴ The chairperson of the Board is former Assembly Member Tremaine Wright.⁵ The other gubernatorial appointees

¹ 2021 Sess., S.B. 854-A/A.B. 1248-A, Chp. 92 (N.Y. 2021)

² N.Y. Cannabis Law § 7(2).

³ *Id.*

⁴ N.Y. Cannabis Law § 7(1).

⁵ Press Release, *Governor Hochul Announces Confirmations of Tremaine Wright and Christopher Alexander to Lead Implementation of the Marijuana Regulation and Taxation Act*, <https://www.governor.ny.gov/news/governor-hochul-announces-confirmations-tremaine-wright-and-christopher-alex>



are Reuben McDaniel III, President and Chief Executive Officer of the Dormitory Authority of the State of New York, and Jessica García, Assistant to the President of the Retail, Wholesale and Department Store Union.⁶ Temporary President and Senate Majority Leader Andrea Stewart-Cousins appointed former State Senator Jen Metzger,⁷ and Assembly Speaker Carl Heastie appointed Adam W. Perry, partner at Hodgson & Russ LLP.⁸

Office of Cannabis Management

The executive director of the OCM is nominated by the Governor, confirmed by the Senate, and serves for a term of three years.⁹ The executive director is Christopher Alexander who was the government relations and policy manager for Vill, LLC, the largest Black-owned and operated multi-state cannabis company in the United States as well as previously working as counsel for the New York State Senate Democratic Majority.¹⁰ The Executive Director supervises the daily operations of the OCM.¹¹

The chief equity officer is nominated by the executive director and confirmed by 4 of the 5 members of the Board.¹² The chief equity officer is responsible for overseeing the social equity components and public education programming aspects of the cannabis programs,¹³ and would issue an annual report to the Board.¹⁴ Jason Starr was confirmed as the chief equity officer. Jason was the inaugural Director of Litigation at the Human Rights Campaign and also served as Counsel for Civil Rights and Federal Affairs in the New York Governor's office under former Governor Andrew Cuomo.¹⁵

The State Cannabis Advisory Board (the "Advisory Board") consists of 13 members.¹⁶ Seven members are appointed by the Governor, 3 members are appointed by the Temporary President of the Senate, 3 members are appointed by the Speaker of the Assembly, and the commissioners of Department of Environmental Conservation, Department of Health, Office of Addiction

[ander-leadhttps://www.governor.ny.gov/news/governor-hochul-announces-confirmations-tremaine-wright-and-christopher-alexander-lead](https://www.governor.ny.gov/news/governor-hochul-announces-confirmations-tremaine-wright-and-christopher-alexander-lead) (last visited Sept. 29, 2021, at 4:35pm).

⁶ Press Release, *Governor Hochul Announces Appointments to Office of Cannabis Management Board*, <https://www.governor.ny.gov/news/governor-hochul-announces-appointments-office-cannabis-management-board> (last visited Sept. 29, 2021, at 4:33pm).

⁷ Press Release, *Former Rosendale Senator Jen Metzger Appointed to Cannabis Control Board*, <https://www.nysenate.gov/newsroom/press-releases/former-rosendale-senator-jen-metzger-appointed-cannabis-control-board> (last visited Sept. 29, 2021, at 4:41pm).

⁸ Press Release, *Speaker Heastie Announces Appointment of Adam W. Perry to the Cannabis Control Board*, <https://nyassembly.gov/Press/?sec=story&story=99037> (last visited Sept. 29, 2021, at 4:45pm).

⁹ N.Y. Cannabis Law § 9.

¹⁰ *See supra* footnote 5.

¹¹ N.Y. Cannabis Law § 11.

¹² N.Y. Cannabis Law § 12.

¹³ N.Y. Cannabis Law § 12(1) and (2).

¹⁴ N.Y. Cannabis Law § 12(3).

¹⁵ Human Rights Campaign staff page, <https://www.hrc.org/about/staff/jason-starr> (last visited Oct. 7, 2021, at 2:27pm).

¹⁶ N.Y. Cannabis Law § 14(2).



Services and Supports, and Agriculture and Markets as *ex-officio* non-voting members.¹⁷ The Advisory Board members must have balanced statewide geographic representation and be diverse in its composition.¹⁸ The appointed members are required to have expertise in several fields relating to health, social equity, and the cannabis and agricultural industries.¹⁹ The chairperson and the vice-chairperson shall be elected by members of the Advisory Board.²⁰

Powers and Duties of the Board and OCM

The Board is responsible for creating the regulations for each of the cannabis programs, while the OCM is responsible for implementing these regulations. The Chair approves licensing and permit recommendations made by the OCM staff, but other Board members would have 14 days to object to any such decision. The Board is also responsible for regulating the packaging and advertising of cannabis products, as well as overseeing the issuance of certain special permits.

The OCM is responsible for managing the licensing of entities wanting to participate in the various cannabis programs. Social equity applicants are from communities impacted by cannabis prohibition; women-owned businesses; minority-owned businesses; Minority/Women-owned Business Enterprises; distressed farmers; or service-disabled veterans.²¹ Extra priority is given to applicants impacted by the war on drugs, who are low-income and who have, or a close relative has, a marijuana-related conviction.²²

Preferences for licensing are also granted for licensees that set out a plan for benefiting communities and people disproportionately impacted by enforcement of cannabis laws. In evaluating applications from entities with 25 or more employees, the OCM must give priority to applicants that have peace labor agreements in place, or use union labor to construct its licensed facility.²³ The Board will also have the power to review all licensees two years into the program, to determine whether any licensee has gained a large control of the market and is undermining the aim of providing business opportunities to as many equity licensees as possible.²⁴

Adult-Use Licenses

There are several types of adult-use licenses:

1. Adult-use cultivator licenses, for those farming cannabis.²⁵
2. Adult-use processor licenses, for those converting raw cannabis into various products, such as tinctures, concentrates, edibles, smokable products, etc.²⁶ These licensees are

¹⁷ *Id.*

¹⁸ N.Y. Cannabis Law § 14(3).

¹⁹ *Id.*

²⁰ N.Y. Cannabis Law § 14(4).

²¹ N.Y. Cannabis Law § 64 *et seq.*

²² *Id.*

²³ *Id.*

²⁴ N.Y. Cannabis Law § 66 *et seq.*

²⁵ N.Y. Cannabis Law § 68 *et seq.*

²⁶ N.Y. Cannabis Law § 69 *et seq.*



also responsible for labelling products, including with the amount of tetrahydrocannabinol (THC) present.²⁷

3. Adult-use distributor licenses, for those who would wholesale and distribute products between the processors and the retail licensees.²⁸ Distributors are also responsible for collecting and remitting the THC based tax.²⁹
4. Adult-use dispensaries, responsible for the direct sale of cannabis products to individuals for personal use.³⁰ These licensees are also responsible for collecting and remitting the retail taxes.³¹
5. Adult-use consumption sites, which are retail locations that also allow individuals to use cannabis products at the location.³²
6. Adult-cooperative licenses, which would allow for groups of individuals to form cooperatives that could cultivate and process cannabis products.³³
7. Nursery licenses, which allows someone to grow immature plants and sell them to other cannabis licensees.³⁴
8. Delivery licenses, which allows a business to make direct at home deliveries from retail locations.³⁵
9. Microbusiness licenses, which allows the holder to cultivate, produce, and retail their own cannabis products but such licensees would be severely limited in their size.³⁶

A tiered model is used that divides between licensees who create the products, those wholesaling the products, and those retailing products. However, a microbusiness licensee can both cultivate, process, and retail their own products but these are meant to be very small licenses as determined by the Board.

Imposition of Tax

The tax structure for adult-use cannabis products is as follows: a distributor would pay tax based on the per milligram amount of THC 0.5 cents (\$0.005) for cannabis flower;³⁷ 0.8 cents (\$0.008) for cannabis concentrate;³⁸ and 3.0 cents (\$0.03) for edibles.³⁹ Additionally, a 9% State tax is added upon retail sales⁴⁰ and another 4% local tax is added to retail sales for localities that allow the sale of cannabis in their locality.⁴¹

²⁷ *Id.*

²⁸ N.Y. Cannabis Law § 71 *et seq.*

²⁹ N.Y. Tax Law § 493 *et seq.*

³⁰ N.Y. Cannabis Law § 72 *et seq.*

³¹ N.Y. Tax Law § 493 *et seq.*

³² N.Y. Cannabis Law § 77 *et seq.*

³³ N.Y. Cannabis Law § 70 *et seq.*

³⁴ N.Y. Cannabis Law § 75 *et seq.*

³⁵ N.Y. Cannabis Law § 74 *et seq.*

³⁶ N.Y. Cannabis Law § 73 *et seq.*

³⁷ N.Y. Tax Law § 493(a)(1).

³⁸ N.Y. Tax Law § 493(a)(2).

³⁹ N.Y. Tax Law § 493(a)(3).

⁴⁰ N.Y. Tax Law § 493(b).

⁴¹ N.Y. Tax Law § 493(c).



Regulatory Structure

The Board has announced that its first public meeting will be held on October 5, 2021, at 1:30pm.⁴² Under the New York State Administrative Procedures Act, an agency must provide the public 60 days to comment on proposed rules and regulations once published in the State Register promulgated by the agency before the agency's first public hearing is held on such proposed rules.⁴³ There is a 45-day public comment period after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the State Register.⁴⁴

Conditional Adult-Use Cultivator Licenses and Conditional Adult-Use Processor Licenses

On February 22, 2022, Governor Hochul signed into law a bill that allows the Board to create two new adult-use cannabis licenses. First is the conditional adult-use cultivator license, which could be issued to already licensed industrial hemp growers with a history of successfully cultivating cannabis. Second, is a conditional adult-use processor license available to already licensed cannabinoid hemp processors so they can begin to process cannabis products consisting of cannabis flower.

The conditional adult-use cultivator license grants the holder the authority to cultivate adult-use cannabis, and to process and distribute adult-use cannabis products as long as those products consist solely of cannabis flower. In order to apply, one must already hold a license to grow industrial hemp from the Department of Agriculture and Markets, and must have grown and harvested hemp for at least two of the previous four years. Holders of this license are allowed to cultivate cannabis outdoors or in a greenhouse with no more than 20 artificial lights unless otherwise authorized. Cultivators will be limited to growing 43,560 square feet of flowering canopy outdoors, or 25,000 square feet in a greenhouse, though they may cultivate both under a greenhouse with under 20,000 square feet and a flowering canopy under 30,000 square feet. This license also grants the authority to minimally process and distribute cannabis products provided they are in the form of cannabis flower until June 1, 2023, without needing additional licenses. Licensees are required to participate in an environmental sustainability program and a social equity mentorship program for individuals over 18 years old who could be considered social equity applicants. Licensees will also be required to enter into labor peace agreements with the relevant union within six month of obtaining the license. Holders of this license, if they have remained in good standing and meet all other license requirements, would be able to apply, and would receive a standard adult-use cultivator license.

The conditional adult-use processor license grants the holder the authority to process and manufacture cannabis products. These licenses would be available to businesses already licensed by the board as cannabinoid hemp processors. Someone with this license will also be

⁴² Office of Cannabis Management, <https://cannabis.ny.gov/cannabis-control-board-meetings> (last visited Sept. 30, 2021, at 1:12pm).

⁴³ N.Y. State Admin. Procedures Act § 202(1)(a)(ii).

⁴⁴ N.Y. State Admin. Procedures Act § 202(4-a).



allowed to distribute cannabis products until June 1, 2023, at which point they would be required to obtain a permanent distributors license. Similar requirements for environmental sustainability and social equity mentorship programs exist, as well as the requirement for a labor peace agreement. Holders of this license, if they have remained in good standing and meet all other license requirements, would be able to apply, and would receive a standard adult-use processor license.

The conditional adult-use cultivator license and conditional adult-use processor license can only be issued prior to December 31, 2022, and their authority expires on June 30, 2024.

COMMUNITY EVENT

Cannabis Panel Discussion

Senator Jackson's office is hosted a cannabis forum to provide important updates on the new adult-use cannabis industry in New York. The forum was held on November 18, 2021, from 4-6pm at City College. A panel of experts discussed this new industry and the significant economic potential for working-class communities of color. Panelists included: State Senator Liz Krueger, sponsor of the MRTA; Jessica Garcia, Board Member; Alvin Bragg, District Attorney-elect for New York County; Miriam Aristy-Farer, cannabis entrepreneur. Slides may be found [here](#) and video of the event may be found [here](#).

CANNABIS CONTROL BOARD MEETINGS

October 5, 2021

At this meeting, the Board passed resolutions to allow the members to sit on the Board while serving in other positions in order to avoid ethical conflicts. The Board also approved the appointment of Jason Star as the Chief Equity Officer, and the transfer of staff from the Department of Health to the OCM.

October 21, 2021

At this meeting, the Board passed resolutions to additional staff, discussed engagement with stakeholders, and drafted Medical Cannabis Home Cultivation regulations for public comment to help expand patient access per the MRTA. Some highlights of the proposed regulations for the Medical Cannabis Home Cultivation are as follows:

1. Certified patients 21 years of age and older may cultivate cannabis for personal use with a limit of 6 plants (3 mature and 3 immature).
2. Designated caregivers caring for patients under 21 years of age or whose physical or cognitive impairments prevent them from cultivating cannabis, may cultivate on behalf of the patient.
3. Designated caregivers can cultivate no more than 6 cannabis plants for any patient. However, caregivers cultivating for multiple patients may cultivate 1 additional plant for each subsequent patient.



4. Imposes a duty on patients to take reasonable measures to ensure that cannabis plants, and any cannabis cultivated from such plants, is not readily accessible to anyone under the age of 21.

Additionally, medical cannabis regulations **do not permit home cultivation for personal use** for those not in the medical program. The MRTA provides an 18-month timeframe for the first adult-use sale by which regulations for Personal Use Home Cultivation must be drafted.

The proposed rules were published in the State Register as of November 17, 2021, and people will have until January 18, 2021, to comment on them. Questions or comments about these proposed regulations should be directed to regulations@ocm.ny.gov or mailed to the OCM at New York State Office of Cannabis Management, P.O. Box 2071, Albany, NY 12220. The proposed rules may be found on the November 17, 2021 State Register.⁴⁵

Expungement & Criminal Justice Update

Executive Director Chris Alexander also provided an expungement and criminal justice update. Under the MRTA, there is to be expungement of records for people with previous convictions for activities that are no longer criminalized. The expungement process is automatic and must be completed within 2 years. Additionally, 45 individuals were in custody or under community supervision for criminal possession of marijuana in the 3rd degree, which were not automatically expunged. All 45 received expungement for this charge; however, 34 individuals remain in custody or supervision for additional crimes.

Approximately 203,000 marijuana related charges are currently being suppressed from criminal background searches, and are in the process to be sealed or expunged. This will add to the approximately 198,000 sealings accomplished as part of the first round of marijuana expungement. Also, nearly 413 local probation or split sentences were vacated under CPL § 440.46-a(1). The total number of marijuana related CPL § 440.10 motions is 784. For more information about the expungement process, visit <https://nycourts.gov/courthelp/criminal/marihuanaExpunge.shtml>.

The Department of Labor has issued regulations⁴⁶ that prohibit most employers from testing their employees for cannabis usage.

Municipal Opt-Out Update

Municipalities (cities, towns, and villages) may pass a local law opting-out of adult-use cannabis retail dispensaries and/or onsite consumption license types from operating in their jurisdictions.

Municipalities are prohibited from opting-out of other license types or of adult-use

⁴⁵ N.Y. Dep't of State, Division of Administrative Rules, New York State Register, Nov. 17, 2021, Vol. 43, Issue 46, Office of Cannabis Management, Proposed Rule Making Part 115 - Personal Cultivation of Cannabis, I.D. No. OCM-46-21-00010-P, available at <https://dos.ny.gov/system/files/documents/2021/11/111721.pdf>.

⁴⁶ N.Y. Dep't of Labor, *Adult Use Cannabis And The Workplace New York Labor Law 201-D*, <https://dol.ny.gov/system/files/documents/2021/10/p420-cannabisfaq-10-08-21.pdf> (last visited Oct. 25, 2021).



legalization itself. Municipalities have reasonable control over local zoning and time, place, and manner of cannabis licenses. Pursuant to the MRTA, local laws opting-out must be passed by **December 31, 2021**. Municipalities that opt-out may opt back in at any time. Municipalities that opt-out will not receive any revenue from the local excise tax on the sale of adult-use cannabis products (4% of the sales price, with 75% going to the municipality and 25% going to the county).

The OCM will be providing information on its website for municipalities that have or will be opting-out, to request the Board to prohibit the establishment of retail dispensary licenses and/or onsite consumption licenses, within the jurisdiction of the municipality.

November 3, 2021

At this meeting, the Board addressed the cannabinoid hemp program. The objectives of this program are to (1) regulate cannabinoid hemp products in New York and provide clear rules for what is and what is not allowed in order to foster the development of a robust cannabinoid industry; (2) establish consumer protection and quality control standards for the manufacturing, packaging, and labeling and laboratory testing of cannabinoid products grounded in public health best practices; and (3) educate and enforce against substandard products or disallowed forms of cannabinoid hemp products in the marketplace.

Hemp is a plant that contains very low levels of THC, less than 0.3%.⁴⁷ Hemp may be used to make cloth, cosmetics, rope, printer ink, wood preservative, detergents, soaps, and lighting oil.⁴⁸

There are several types of cannabinoid hemp licenses:

1. Cannabinoid Hemp Processor (Extractor & Manufacturing) - processor extracting cannabinoids from hemp biomass to create crude oil, distillate, or isolate to be further refined or manufactured into cannabinoid hemp products. This type of license also permits manufacturing of final cannabinoid hemp products.
2. Cannabinoid Hemp Processor (Manufacturing Only) - processor who purchases intermediate crude oil, distillate, or isolate to manufacture final cannabinoid hemp products.
3. Cannabinoid Hemp Distributor - permit to distribute cannabinoid hemp products manufactured out-of-state, at wholesale to cannabinoid hemp retailers within New York
4. Cannabinoid Hemp Retailer - a business, including an internet retailer, that sells cannabinoid hemp products in their final form, to consumers to be used for human consumption.

There are several cannabinoid hemp regulatory standards:

1. Manufacturing Standards

⁴⁷ WebMD, *Hemp*, <https://www.webmd.com/vitamins/ai/ingredientmono-1605/hemp> (last visited Nov. 9, 2021, at 2:49PM).

⁴⁸ *Id.*



- a. Products must be manufactured using Good Manufacturing Practices (GMP) specific to the product form (*e.g.*, food or dietary supplements)
2. Laboratory Standards
 - a. Labs must be ISO/IEC 17025 accredited or approved to test medical cannabis in New York
 - b. Full panel of testing is required including cannabinoid profile, heavy metals, microbials, pesticides, mycotoxins, and residual solvents
3. Packaging and Labeling Standards
 - a. Nutritional or supplement fact panel
 - b. Total cannabinoids per product/serving, stating the amount of CBD and THC, if applicable
 - c. QR code or link to Certificate of Analysis
 - d. Product warnings (*e.g.*, not evaluated by FDA)
 - e. Mechanism to report an adverse event
 - f. List of all ingredients
 - g. Expiration or Best Buy date
 - h. Country where hemp is sourced

Due to the delay in adopting regulations, the effective date for many provisions has been extended by 6 months as intended when the regulations were initially proposed for public comment.

There are expected to be edits to cannabinoid hemp regulations:

1. Change the per serving milligram (mg) cap for dietary supplement cannabinoid hemp products from 75mg to 100mg.
2. Remove the requirement that cannabinoid hemp products be shelf stable.
3. Increase the acceptable THC concentration of intermediary hemp extract from 3% THC to 5% THC.
4. Allow out-of-state manufacturers to omit the label warning that the product may cause a consumer to fail a drug test.
5. Establish a process for small hemp farmers to affordably process and manufacture their own product.
6. Move the cannabinoid hemp testing limits from regulation to a guidance document.
7. Modify the requirement to list the milligrams of total THC per serving and per package on cannabinoid hemp product labeling.
8. Require cannabinoid hemp processors to include on the label the state(s) where the hemp used to manufacture the product was sourced from.
9. Define “craft” cannabis to prohibit advertising and marketing from processors who do not meet the definition.

The MRTA approaches legalization from the perspective of public health and provides for a campaign to inform New Yorkers of key aspects of the law and essential health and safety measures:



1. Adults only: Only adults 21+ may possess and purchase adult-use cannabis. Cannabis impacts the developing brain.
2. Drive high, get a DUI: Cannabis can affect motor coordination and reaction time. Remains illegal to drive under the influence of cannabis. If an individual is driving impaired, it will result in a DUI.
3. Safe storage: All cannabis should be locked up and stored securely; kept out of sight, and away from individuals under 21 and pets.
4. Not legal everywhere: Since cannabis remains illegal federally, individuals cannot cross state or international borders in possession of cannabis. It is also illegal to possess and use cannabis on federal lands or property.

December 16, 2021

At this meeting, the Board addressed the cannabinoid hemp program. The Board approved a resolution to conditionally approve a change in ownership of MedMen NY, Inc.⁴⁹ The Board also approved several proposed changes to the cannabinoid hemp regulations.⁵⁰ The changes are:

1. Change the per serving milligram cap for dietary supplement products from 75mg to 100mg.
2. Increase the acceptable THC concentration of intermediary hemp extract from 3% THC to 5% THC
3. Allow out-of-state manufacturers to omit the label warning that the product may cause a consumer to fail a drug test if the product is manufactured using isolate or broad-spectrum hemp extract.
4. Remove the labeling requirement that the font size of information in the supplement or nutritional fact panel be larger than other information on the product label.
5. Remove the requirement that cannabinoid hemp products be shelf stable.
6. Add a definition for “craft” cannabinoid hemp products.
7. Establish a new license type for “Cannabinoid Hemp Farm-Processors” to allow manufacturing of flower products for hemp grown by the licensee.

The Board also approved a resolution authorizing the OCM to enter into a memorandum of understanding or lease agreement for temporary office space in New York City following all applicable fiscal and budgetary rules and procedures.⁵¹ The Board also authorized the OCM to

⁴⁹ Resolution No. 2021-09, *Resolution to Conditionally Approve the Change in Ownership of Registered Organization Medmen NY, Inc.*, available at

<https://cannabis.ny.gov/system/files/documents/2021/12/ccb-resolution-change-in-ownership-12.16.21.pdf>.

⁵⁰ Resolution No. 2021-10, *Resolution to Authorize the Office of Cannabis Management to File Amendments to the Cannabinoid Hemp Regulations for Public Comment*, available at

<https://cannabis.ny.gov/system/files/documents/2021/12/ccb-resolution-cannabinoid-hemp-regulations-12.16.21.pdf>.

The proposed regulations are available at

<https://cannabis.ny.gov/system/files/documents/2021/12/ccb-proposed-cannabinoid-hemp-regulations-12.16.21.pdf>.

⁵¹ Resolution No. 2021-11, *Resolution to Authorize the Executive Director of the Office of Cannabis Management (Office) to Enter Into a Memorandum of Understanding or Lease Agreement for Temporary Office Space in New York City at 250 Broadway* and to Direct the Office to Begin Negotiations to Find a Long-Term Office Space Solution in Both New York City and Buffalo*, available at

https://cannabis.ny.gov/system/files/documents/2021/12/resolution_office_space_12-16-21_amended.pdf.



begin negotiations for long-term office space in Buffalo and New York City. The principal office for the Board and the OCM must be in the city of Albany and maintain branch offices in New York City and the city of Buffalo.

The Board also approved the staffing recommendation of the Executive Director.⁵² OCM has also posted career opportunities at <https://cannabis.ny.gov/careers-office-cannabis-management>.

Municipal Opt-Out Update

As of December 14, 2021, OCM received 365 municipal opt-out requests. The deadline to pass local laws opting out of retail dispensaries and/or onsite consumption licenses was December 31, 2021. Municipalities that opted-out may opt back in at any time.

Municipality Type	Opted-Out	Total	Percentage Opt-Out
Cities	6	62	10%
Towns	259	932	28%
Village	100	534	19%

Upcoming Medical Cannabis Program Changes

OCM is working to implement changes directed in the MRTA to expand the medical program. Changes require system updates to the patient registration and certification system. All current patient, caregiver, and practitioner registrations issued via the Department of Health remain valid and in effect under the OCM.

January 25, 2022

At this meeting, the Board passed two resolutions and addressed the social and economic equity fund. The first resolution delegated hiring authority from the Board to the OCM executive director.⁵³ The second resolution authorizes the OCM to enter into a service level agreement with the Office of Children and Family Services for call center functions that will help answer questions regarding the medical and cannabinoid hemp programs.⁵⁴ In the State of the State Address and the Executive Budget, Governor Hochul pledged to fund the Social and Economic

⁵² Resolution No. 2021-12, *Resolution Affirming the Executive Director's Staffing Recommendations*, available at <https://cannabis.ny.gov/system/files/documents/2021/12/ccb-resolution-office-space-12.16.21v3.pdf>.

⁵³ Resolution No. 2022-01, *Resolution Delegating to the Executive Director of the Office of Cannabis Management the Authority to Exercise Employment Decisions Relating to Office of Cannabis Management Employees Except Certain Decisions Concerning Employees in Certain Titles*, available at https://cannabis.ny.gov/system/files/documents/2022/01/ocm_resolution_2022-01_delegating_employment_decision_s_ed_1.pdf.

⁵⁴ Resolution No. 2022-02, *Resolution to Authorize the Executive Director of the Office of Cannabis Management (Office) to Enter Into a Service Level Agreement Between the NYS Office of Children and Family Services Human Services Call Center and the Office for the Provision of Call Handling Services*, available at https://cannabis.ny.gov/system/files/documents/2022/01/ocm_resolution_2022-02_sla-ocfs_1.pdf.



Equity Fund (the “Fund”) at \$200 million through public/private partnerships. The Fund will provide support to certain licensed social and economic equity entrepreneurs for costs associated with establishing and operating adult-use cannabis dispensaries. The Dormitory Authority of the State of New York will provide services to social equity cannabis retailers, including:

1. Identifying and acquiring or leasing retail dispensary locations;
2. Designing, constructing, and renovating the locations to operate as adult-use cannabis dispensaries; and
3. Providing dispensaries with furniture and equipment as needed to operate the facilities.

Medical clinicians are now able to certify patients for any clinical condition. The OCM has launched the Medical Cannabis Data Management System (“MCDMS”) to streamline this.

Municipal Opt-Out Update

The deadline for municipalities to opt-out of retail dispensary licenses and on-site consumption licenses was December 31, 2021. Municipalities that opted-out may opt-in at any time. Municipalities cannot prohibit other cannabis businesses and conduct that is legal under the MRTA, including possession and consumption of cannabis by adults age 21 and older.

Municipality Type	Opted-Out: Dispensary Only	Dispensary (%)	Opted-Out: Onsite Only	Onsite (%)	Opted-Out: Both	Opted-Out: Both (%)
Cities	0	0%	4	6.5%	6	10%
Towns	3	> 1%	53	5.6%	363	39%
Villages	0	0%	18	3.4%	153	29%
Statewide	3	> 1%	75	4.9%	522	34%

Cannabis Conversations

The OCM will host an 11-part statewide conversation to foster community engagement. People may register at any of these conversations [here](#).

February 17, 2022

At this meeting, the Board passed a resolution for proposed medical cannabis regulations regarding the cultivation, processing, packaging, marketing and sale of medical cannabis.⁵⁵

These proposed regulations may be found [here](#). The regulations make programmatic changes to reduce environmental impacts and create efficiencies, including:

⁵⁵ Resolution No. 2022-03, *Resolution Directing the Office of Cannabis Management to File Certain Proposed Medical Cannabis Regulations*, available at https://cannabis.ny.gov/system/files/documents/2022/02/medical_cannabis_regulations_resolution_1.pdf.



1. Allowing registered organizations to accept packaging for reuse and modifying packaging and labeling requirements to support it, reducing waste created by the industry;
2. Further prohibitions to packaging and labeling that advertise to youth;
3. Removing restrictions on naming conventions for products, paving the way for products to include names of various cannabis strains;
4. Allowing flexibility for pharmacists to provide their services remotely while maintaining a minimum pharmacist staffing requirement for each dispensary to ensure patients have access to medication guidance from a healthcare professional;
5. Replacing the overburdensome requirement that Registered Organizations maintain continuous video surveillance for 24 hours a day to allow for motion-activated recording after business hours; and
6. Allowing the OCM to modify product testing requirements as necessary rather than through regulation, providing critical flexibility to protect public health.

March 10, 2022

At this meeting, the Board passed 3 resolutions. The first was a resolution to enact regulations concerning conditional adult-use retail dispensaries.⁵⁶ To be eligible for this license, applicants must: (1) have had a pre-MRTA cannabis related offense in New York, or had a parent, guardian, child, or dependent with a pre-MRTA cannabis related offense in New York; and (2) have experience owning and operating a qualifying business in New York. The proposed regulations outline the application and selection process. This conditional license lasts only for 4 years and during that time the licensee is required to maintain majority ownership over the business and cannot sell during the four years. The proposed regulations may be found [here](#). Public comment for these regulations will end on May 29, 2022.

The second resolution addresses the new conditional adult-use cultivator license.⁵⁷ The application period of this license will be from March 15, 2022, through June 30, 2022. This license will allow cultivation for 2 years.

The new conditional adult-use cultivator license allows hemp growers to apply for a license to grow cannabis containing over 0.3% THC for the adult-use market. In order to be eligible for this license, an applicant must: (1) have been authorized to grow hemp under the Department of Agriculture and Markets Industrial Hemp Research Pilot Program; (2) be in good standing with the Department of Agriculture and Markets; (3) have been authorized by the Department of Agriculture and Markets to grow cannabinoid or “CBD hemp” as opposed to growing hemp for

⁵⁶ Resolution No. 2022-04, *Resolution Directing the Office of Cannabis Management to File Certain Proposed Conditional Adult-Use Retail Dispensary Regulations*, available at https://cannabis.ny.gov/system/files/documents/2022/03/conditional_adult-use_retail_dispensary_resolution_031022.pdf.

⁵⁷ Resolution No. 2022-05, *Resolution Approving a Certain Application Form for a Conditional Adult-Use Cultivator License and Ordering That a New Application Period for a Conditional Adult-Use Cultivator License Open on March 15, 2022 and Close On June 30, 2022*, available at https://cannabis.ny.gov/system/files/documents/2022/03/aucc_resolution_031022.pdf.



grain or fiber; (4) have grown and harvested cannabinoid or “CBD hemp” for 2 of the past 4 years (between 2018 - 2021) and be able to provide the OCM with documented proof; and (5) hold at least 51% or more ownership in the entity that held the industrial hemp grower authorization from the Department of Agriculture and Markets. Further, licensure is conditioned on meeting eligibility criteria and program compliance under the law that include: (1) safe, sustainable, and environmentally friendly cultivation practices; (2) participation in a social equity mentorship program; and (3) a labor peace agreement with a bona fide labor organization. For this license, there is a non-refundable \$2,000 license and application fee. To apply for this license, please visit the OCM’s application website [here](#).

The third resolution allows Board members and OCM employees to serve as notary publics.⁵⁸

Adult-use sales are expected to begin before the end of 2022.

[April 14, 2022](#)

At this meeting, the Board passed 2 resolutions. The first resolution approved 52 applications for adult-use conditional cultivator licenses.⁵⁹ OCM received over 150 applications and recommended 52 applications for this license. The second resolution authorizes filing revised Medical Home Cultivation regulations to incorporate some proposed changes from public comments that were received.⁶⁰ The regulations were released on November 17, 2021, and the public comment period ended on January 18, 2022. OCM received over 160 comments. Some of the proposed changes include: (1) update definitions to clarify outdoor cultivation permitted; (2) revised storage and security requirements; (3) clarify designated caregiver plant limits; and (4) provisions for the sale of medical cannabis seeds and immature plants for home cultivation by entities licensed or registered by OCM. The proposed regulations may be found [here](#). Public comment for these proposed regulations will begin on May 4, 2022, after publication in the state register, and will close on June 18, 2022.

The 2022-23 New York State budget enacted a social equity fund that contains \$200 million in public-private funding. The fund will provide support to social equity entrepreneurs and assist with costs of establishing and operating adult-use cannabis retail dispensaries.

OCM’s “Cannabis Conversations” provides fact sheets and FAQs for entities and consumers. The fact sheets and FAQs may be found [here](#).

⁵⁸ Resolution No. 2022-06, *Resolution Permitting Any Member of the Cannabis Control Board or Employee of the Office of Cannabis Management to Hold the Public Office of Notary Public*, available at https://cannabis.ny.gov/system/files/documents/2022/03/resolution_notary_public_31022.pdf.

⁵⁹ Resolution No. 2022-07-Amended, *Resolution Issuing Conditional Adult-Use Cultivator Licenses*, available at <https://cannabis.ny.gov/system/files/documents/2022/04/ccb-conditional-cultivator-resolution-4.14-amended-v2-07.pdf>.

⁶⁰ Resolution No. 2022-08, *A Resolution to Permit the Office of Cannabis Management to File Revised Regulations for the Home Cultivation of Medical Cannabis*, available at https://cannabis.ny.gov/system/files/documents/2022/04/ccb-medical-home-grow-resolution_08.pdf.



REGULATORY UPDATES

November 17, 2021 State Register

The OCM introduced proposed rules regarding medical cultivation of cannabis.⁶¹ According to the proposed regulation, the purpose is to authorize the home cultivation of cannabis for certified medical cannabis patients.⁶² People will be able to comment on these proposed rules until January 18, 2022. For existing regulations on medical use of cannabis, please go [here](#).

November 24, 2021 State Register

The OCM adopted rules regarding cannabinoid hemp.⁶³ According to the notice of adoption, “[t]hese amendments add a new Part 114 to Chapter II, Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, regulating the processing and retail sale of cannabinoid hemp in New York State. As part of this notice of adoption, technical edits were made to reflect changes made by the [MRTA] which moved the regulatory authority of the Cannabinoid Hemp Program from the Department of Health to the [OCM].”⁶⁴

January 5, 2022 State Register

The OCM introduced proposed rules for cannabinoid hemp.⁶⁵ According to the notice, the purpose is to create a licensing framework for cannabinoid hemp processors and cannabinoid hemp retailers.⁶⁶ People will be able to comment on these proposed regulations until March 7, 2022. For existing regulations on cannabinoid hemp use, please go [here](#).

March 30, 2022 State Register

The OCM introduced proposed rules for conditional adult-use retail dispensaries.⁶⁷ According to the notice, the purpose is to establish a framework for a subset of retail licenses for the adult-use cannabis program. The public comment period for these regulations ends on May 29, 2022.

⁶¹ N.Y. Dep’t of State, Division of Administrative Rules, New York State Register, Nov. 17, 2021, Vol. 43, Issue 46, Office of Cannabis Management, Proposed Rulemaking Part 115 - Personal Cultivation of Cannabis, I.D. No. OCM-46-21-00010-P, available at <https://dos.ny.gov/system/files/documents/2021/11/111721.pdf>.

⁶² *Id.*

⁶³ N.Y. Dep’t of State, Division of Administrative Rules, New York State Register, Nov. 24, 2021, Vol. 43, Issue 47, Office of Cannabis Management, Notice of Adoption Part 114 - Cannabinoid Hemp, I.D. No. HLT-45-20-00002-A, available at <https://dos.ny.gov/system/files/documents/2021/11/112421.pdf>.

⁶⁴ *Id.*

⁶⁵ N.Y. Dep’t of State, Division of Administrative Rules, New York State Register, Jan. 5, 2022, Vol. 44, Issue 1, Office of Cannabis Management, Proposed Rulemaking Part 114 - Cannabinoid Hemp, I.D. No. OCM-01-22-00026-P, available at <https://dos.ny.gov/system/files/documents/2022/01/010522.pdf>.

⁶⁶ *Id.*

⁶⁷ N.Y. Dep’t of State, Division of Administrative Rules, New York State Register, Mar. 30, 2022, Vol. 44, Issue 13, Office of Cannabis Management, Proposed Rulemaking Part 116 - Conditional Adult-Use Retail Dispensary, I.D. No. OCM-13-22-00002-P, available at <https://dos.ny.gov/system/files/documents/2022/03/033022.pdf>.



TAX UPDATES

The New York State Department of Taxation and Finance has posted a [new website](#) containing information on the excise tax for adult-use cannabis products. This tax applies to (1) adult-use cannabis products (AUC) distributors, on sales of AUC to AUC retailers; and (2) AUC retailers, on the AUC sales or transfers to retail customers. Additionally, cannabis businesses will be able to deduct their business expenses from state taxes.

Federal prohibition of cannabis prevents cannabis businesses from deduct normal business expenses from their taxes. New York has decoupled a part of its tax code from the federal tax code (IRS Code 280(e)) to allow cannabis businesses to deduct their normal business expenses from their New York state taxes.⁶⁸

⁶⁸ N.Y. Tax Law §§ 208(9)(a)(23), 612(c)(46).