

The State of Cannabis in New York

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On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) legalized recreational cannabis use in New York State for adults 21 years and older. The industry is expected to generate thousands of jobs and hundreds of millions of dollars in revenue for State and local municipalities. The Cannabis Control Board (CCB) is set, but guidance has been limited and the State still needs to issue regulations, which are expected later this year. Meanwhile, several pre-regulation developments are worth noting, such as opt-outs, timing and preparations.

What Does It Mean to "Opt Out"?

When the MRTA legalized adult-use recreational cannabis, it permitted local municipalities to pass a local law, by December 31, 2021, to opt out from allowing marijuana dispensaries or on-site consumption lounges within their borders. Failure to take any action was considered an opt-in under the law. While still unconfirmed, nearly 49% of municipalities opted out from allowing dispensaries, and nearly 55% decided not to allow on-site consumption lounges.

This means:

- Municipalities that opted out did not *completely* opt out of the legal cannabis marketplace and may still host licensed cultivators, processors, distributors, delivery services, nurseries and microbusinesses (just no dispensaries or on-site consumption lounges are allowed).
- For those municipalities that opted in, it is *not guaranteed* that a retail dispensary or cannabis consumption lounge will be located within their borders, as the State has not yet provided additional guidance regarding the number of licenses to be issued or whether licenses will be earmarked for specific locations.
- The opt-out does not prohibit the use or possession of cannabis by adults 21 years and older in such municipalities and, once allowed, will not prohibit the home growth of cannabis within such municipalities.

Current Legal Status and Timeline

As mentioned, New York State has yet to release regulations or issue sample license applications for hopeful licensees. While there has been substantial discussion around the gray or gifting market in New York State, the CCB has made clear that all untaxed cannabis is illicit cannabis.

It is expected that the rules and regulations for recreational cannabis will be released for public comment within the next few months. The chair of the CCB, Tremaine Wright, has publicly stated that the legal cannabis ecosystem may be in place by late 2022, with a goal of opening dispensaries for the summer of 2023. This timing would make sense, as it would enable cultivators to plant seeds the following spring.

Preparations for Potential Applicants

Prospective licensees face a series of uncertain questions in an ever-evolving environment. From identifying the right license, gaining the support of local governments, choosing a location, building a team, and establishing operating plans that comply with the not-yet-released rules and regulations governing cannabis and cannabis-



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adjacent businesses, there are many steps a potential applicant must take immediately. In the interests of being ready to proceed when regulations are issued, potential

licensees should:

- Form a corporate structure and ensure all corporate documents are in order.
- Establish written investor agreements and secure necessary investors.
- Identify prospective locations and speak with local municipalities about potential operating restrictions. Cultivators should consider zoned "agricultural" districts for the many benefits that such locations can provide.
- Network with other potential licensees to begin developing a supply chain.

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