



Municipalities Face Deadline on Whether to Permit Recreational Cannabis Operations

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By **Lisa Gora** and **Jordan Asch** | June 14, 2021

Amidst the confusion of New Jersey's much anticipated regulated adult-use cannabis marketplace, are the regulations that govern a municipality's right to determine whether or not to permit the operation of cannabis businesses within their borders.

Under the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), a municipality may prohibit or allow the operation of one or more of the six classes of cannabis licenses within its bounds. However, a municipality that denies operations may not prohibit the delivery of cannabis items and related supplies by a licensed delivery service to customers located in the municipality. A municipality choosing to exclude cannabis establishments must do so by enacting an ordinance under the authority provided by CREAMMA. CREAMMA provides municipalities 180 days from its enactment, or until August 21, 2021, to adopt an ordinance prohibiting cannabis operations. Any municipality that does not adopt such an ordinance within this timeframe may not elect to do so for a five-year period thereafter, at which point the 180-day window reopens. Certain municipalities had adopted ordinances prohibiting cannabis establishments prior to February 22, 2021. Pursuant to CREAMMA, these ordinances are null and void, and those municipalities must adopt new ordinances to comply with CREAMMA.

The NJ State League of Municipalities (the "League") has issued guidance as to municipal ordinances to the State's municipal elected officials. Though the League has not taken a stance as to the legalization of adult-use cannabis generally, it has provided a "sample opt-out ordinance" that municipalities may adopt. Some municipalities have already adopted the sample opt-out ordinance, or have adopted their own similar ordinance.

For example, Mount Olive, Dover, Wayne, Morristown, Bridgewater, Hopewell Borough, and Union have each adopted or indicated that they would adopt ordinances banning cannabis operations within their borders. Other municipalities have indicated that they would like more information regarding the anticipated regulatory framework that the Cannabis Regulatory Commission (the "Commission") is in the process of developing before determining whether or not to adopt an opt-out ordinance. Pursuant to the provisions of CREAMMA, those regulations are to be provided by the Commission on, or prior to, August 21, 2021.

Still other municipalities have affirmatively indicated that they will permit cannabis establishments to at least some extent. For example, Somerset has introduced a zoning ordinance that would allow cannabis establishments and require a 2% municipal tax be levied on retail sales, and 1% levied on wholesale sales. This rate is the maximum taxation rate permitted under CREAMMA. Hoboken has introduced an ordinance that would allow up to five Class 5 Retail cannabis establishments.

It is worth noting that while municipalities may impose additional local taxes on licensees, CREAMMA makes any cannabis licensee or owner of property used by a cannabis licensee wholly ineligible for any "State or local

economic incentive.” Thus, cannabis businesses are disincentivized from remediating and using Brownfield properties that are often located in some of the same communities that CREAMMA identifies as “Impact Zones,” or from other job creation and capital investment programs set up for some of those same communities throughout the state.

Significantly, while municipalities that do not adopt an opt-out ordinance by the August 21 deadline may not do so for a five-year period, the municipalities that *do* adopt an opt-out ordinance may change course and opt-*in* at any time. Hopewell, for instance, has indicated that its adoption of an opt-out ordinance is not meant to be a ban of cannabis operations, but rather a mechanism to allow the municipality to undertake further review.

Another factor concerning a municipality’s ability to govern cannabis operations is the land-use laws and local zoning ordinances that will apply to cannabis operations and establishments. Under CREAMMA, growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items, and bulk transportation of cannabis items “shall be permitted uses in all industrial zones of [a] municipality” that has not adopted an opt-out ordinance. Sales of cannabis to consumers at a retail location “shall be a conditional use in all commercial zones or retail zones” in such municipalities, “subject to meeting the conditions set forth in any applicable zoning ordinance or receiving a variance” pursuant to the Municipal Land Use Law.

Additionally, a municipality may impose a separate “local licensing or endorsement requirement” and may limit the number, location, manner, or times of operation for cannabis establishments. An applicant for a license from the Commission must provide a copy of its application to the municipality in which it will be located, and the municipality will “determine whether the application complies with its local restrictions” regarding the number, location, manner, or times of operations.

Unsurprisingly, local discussion of whether to allow, limit, or prohibit cannabis establishments has drawn impassioned pleas from all sides of the argument. Some cite the prospective tax income and other economic benefits that municipalities allowing cannabis will collect. Others argue that allowing cannabis establishments will lead to a rise in crime or a decrease in property value. In one op-ed published on centraljersey.com, a resident of Cranford suggested that it would be a “dereliction of its duties” for the Cranford Township Committee to not adopt an opt-out ordinance.

The August 21 deadline for New Jersey municipalities to take prohibitive action on allowing legal cannabis establishments is fast approaching. Officials seeking guidance from the Commission before making a determination may be out of luck, as the deadline for the issuance of regulations is also August 21. All municipalities would be wise to make a careful and conscious decision on whether or not to adopt an opt-out ordinance before the upcoming deadline. Local residents, state regulators, and hopeful licensees are all watching closely.

Disclaimer: Cannabis remains a scheduled narcotic under federal law and anyone considering entering this field should consult with competent counsel first.

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