



Sellers Beware: New Jersey’s Cannabis Regulatory Scheme and Pitfalls

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As most residents of New Jersey are aware, the sale of recreational cannabis is under way. Or, somewhat underway. Retailers and entrepreneurs have rushed to the Cannabis Regulatory Commission (“CRC”) to obtain licensing and finalize other red-tape requirements in order to sell the storied plant that grows naturally around the world. While most business owners have locations in mind before hiring lawyers to navigate the lengthy application process (the CRC’s explanation of the application process is itself 31 pages long), all business owners must be aware of local ordinances before they begin selling cannabis or cannabis products.

Plan in advance to avoid having to send a CYA letter later. It is important to remember the basics Business owners should first have an understanding of potential fines and penalties before embarking on a bureaucratic maze that would make Rube Goldberg blush. That likely means more lawyers. While it is legal for adults over the age of 21 to own and possess up to six ounces of cannabis in New Jersey, some municipalities still prohibit its sale by way of ordinance.

Pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (“CREAMA”), there are six marketplace classes of business licenses that may issue: (1) for farmers to grow and cultivate; (2) for facilities to manufacture, prepare, and package cannabis goods; (3) for wholesalers to obtain and sell cannabis items for later resale by other licensed sellers; (4) for distributors who transport cannabis plants in bulk from a licensed cultivator to another cultivator, or cannabis items in bulk from any licensed business to another licensed business; (5) for retailers who sell cannabis, cannabis items, and related supplies to consumers; and (6) for delivery services who provide courier services for consumer purchases that are fulfilled by a licensed retailer in order to make deliveries of items to a consumer, which includes direct purchases

through the courier service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

CREAMA also allows municipalities to adopt ordinances and regulations limiting the number of cannabis establishments or outright prohibiting them. There are some specific carve-outs regarding a municipality's ability to regulate certain types of cannabis establishments. For example, a municipality may not regulate the time of operations for a cannabis delivery service. And, while a municipality may prohibit a cannabis delivery service from having its principal place of business within the municipality, a municipality may not prohibit the delivery of cannabis or cannabis products by a licensed delivery service to residents within its municipality.

In practice, municipalities have two major choices in limiting cannabis use: they can amend their zoning code to make cannabis establishments a prohibited use, and they can amend the township code to prohibit the issuance of cannabis licensing. Municipalities are permitted to implement enforcement mechanisms, should they choose to prohibit or limit the number of licensed cannabis establishments. As such, some municipalities in New Jersey have enacted ordinances creating civil penalties for violating such restrictions.

A sample ordinance may read: any person, business, firm, corporation, or other organization, including any licensed medical and/or cannabis establishment, found to be engaged in the retail sale of cannabis, shall be subject to a civil fine and penalty not to exceed \$2,000. Such an ordinance may be enforced by local police, or a code enforcement officer. Further, towns may enact ordinances stating that each day that a person, business, firm, corporation, or other organization remains in violation of such a provision constitutes a continuing violation punishable as separate and distinct offenses, which are subject to civil fines for each day of violation. To put that into perspective, a cannabis retailer in a town or zone that prohibits the sale of cannabis could rack up \$200,000 in fines in the span of 100 days of business.

As a result of this, while possessing cannabis for recreational use is permitted in New Jersey, the legal sale of cannabis is a bit more mottled. Despite the overwhelming support for the legalization of cannabis in New Jersey—over two thirds of voters (2,737,682 voters) supported legalization—only 164 of New Jersey's 564 municipalities opted in to allowing legal sales. That means, although 67% of voters supported legalization, 71% of New Jersey municipalities prohibit its sale . . . a fine example of representative democracy.

For entrepreneurs and advocates, that poses a number of issues both legal and political. Entrepreneurs will obviously have to navigate which municipalities permit the sale of cannabis, which municipalities restrict cannabis establishments (e.g., a municipality may permit cultivation, but not retail), and which municipalities flatly prohibit the sale of cannabis. The added issue for entrepreneurs—and this overlays with the interests of advocates—is which municipalities are changing or considering change. Some towns that initially opted out of legal cannabis sales are

considering new evidence, soliciting studies, and reviewing the results in other towns. And so, the above numbers are not fixed, and are in fact currently evolving.

Lastly, as with any new, large regulatory change, we see innovation and creativity, some of which may touch the outer edges of legality. In a sense, that's the American way. Many residents may know of, or may have visited, pop-up cannabis "shops" or buses (food-truck converted into a cannabis friendly business). These businesses sell nominal consumer goods (stickers, lollipops, t-shirts, water bottles, etc.) for an exorbitantly high price. And as a token of their appreciation for the business, the business will "gift" the consumer a correlative amount of cannabis. For example, the business may sell a sticker, which reads "1 oz. Buddy's Bus," for \$300 to \$500 dollars. The owner of the business may then gift the sticker purchaser one ounce of cannabis.

It is not clear whether such a practice violates the law or would violate a local ordinance prohibiting the sale of cannabis. What is clearly a pretext seems to be skirting a large regulatory scheme. That said, it is legal in New Jersey to gift a person up to one ounce of cannabis, and it is legal to possess up to six ounces. This practice has not been tested in the courts. Either way, both the sellers in these pop-up stands, and businesses seeking formal licensing should beware of both state and local regulations.

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