

## **DISPENSARIES AND GROW HOUSES: THE IN'S AND OUT'S OF MARIJUANA LEGALIZATION**

By: Michelle Greenberg

On March 31, 2021, Governor Andrew Cuomo signed The Marijuana Regulation and Taxation Act into law. The new law, among other things, legalizes the use, cultivation, distribution and retail sale of marijuana and other cannabis products.

The law establishes an Office of Cannabis Management, which will be an independent entity within the Division of Alcoholic Beverage Control that will develop a regulatory framework, and issue licenses for cultivation, distribution and sales in the upcoming months. Reports indicate that about 300 licenses will be issued by 2023; and the number of licenses is expected to triple by 2027.

The law allows cities, towns and villages to opt out from permitting the retail sale and consumption. Any election to opt out must be made by December 31, 2021, although a municipality can reverse that election at a later date. To the extent a municipality does not opt-out, it can still implement other restrictions through its zoning code. For example, under the law, sites must be at least 500 feet away from schools and 200 feet away from houses of worship; local zoning law can further restrict the locations and hours of operation of retail dispensaries and on-site consumption sites. Already, the Town of Babylon, as well as Atlantic Beach, Freeport, Island Park, Rockville Centre and Williston Park have indicated they are considering opting out or exploring imposition of additional restrictions.

Retail sales will be subject to 9% state sales tax, plus up to 4% local sales tax. In Nassau and Suffolk County, 1% of the local sales tax will be paid to the county, the remaining 3% will be allocated among the town and village where the sale occurs. By opting out, a municipality will not be entitled to collect any of the local sales tax. Tax revenue generated under this law can be used however the municipality sees fit.

It is anticipated that demand for real estate to house marijuana related business will be strong, particularly warehouse and industrial space to house cultivation and distribution centers and retail spaces for the sale and consumption of marijuana. Note, under the law, sale and consumption sites need to be separate and distinct spaces, similar to that of liquor stores selling product for off-site consumption and bars which serve it for on-site consumption.

It should be noted that although the consumption, distribution and sale of marijuana is now legal under New York State law, it is still illegal under federal law. During the Obama administration, the federal government did not enforce laws in states where marijuana was legal, and trends indicate that the Biden administration will take a similar lenient stance. Accordingly, while there is a risk that a property owner leasing property for cultivation, distribution, sale or consumption of marijuana could face

criminal penalties at the federal level, or could be deemed to be in default of loan documents which prohibit illegal activity at the property, the likelihood of such risk is low.

Stay tuned for additional articles on The Marijuana Regulation and Taxation Act and its impact on real estate in New York as regulations are developed.

To discuss any questions about The Marijuana Regulation and Taxation Act as it pertains to owning, financing and leasing real estate, please feel free to contact me at [mgreenberg@sahnward.com](mailto:mgreenberg@sahnward.com) or 516-228-1300.