

Cannabis Law Alert: Counties Can Prohibit Adult-Use Cannabis Operations Under Governor Cuomo's Proposed Cannabis Regulation And Taxation Act

The Governor's office recently confirmed that the proposed Cannabis Regulation and Taxation Act (CRTA) allows any county to prohibit any or all components of adult-use cannabis businesses. Counties, as well as cities with a population of greater than 100,000 residents, have the authority to pass legislation to prohibit the cultivation, processing, distribution and/or retail sale of cannabis to cannabis customers. The proposed CRTA also clarifies that cities with populations greater than 100,000 residents will not be bound by their county's decision relative to any prohibition. Such a city would need to enact legislation setting forth its own prohibitions should it decide to proceed in that manner. To effectuate such a prohibition, a county or larger city must adopt a local law, ordinance, or resolution by a majority vote of its governing body on or before December 31, 2021.

For municipalities that are not subject to a county-wide prohibition related to adult-use cannabis businesses, there will be limited ability to regulate the adult-use cannabis industry. The proposed CRTA specifically preempts counties, towns, cities, and villages from adopting any rule, ordinance, regulation or prohibition pertaining to the operation or licensure of registered organizations, adult-use cannabis licenses or cannabinoid hemp licenses. Such municipalities are limited to regulating only the hours of operation and location of licensed adult-use cannabis retail dispensaries. Further, those regulations cannot make the operation of such licensed retail dispensaries unreasonably impractical. Since the exemption is specific to licensed adult-use cannabis retail dispensaries, it implies that the municipality is without authority to regulate any other components of the cannabis businesses.

The proposed CRTA also specifies that no municipality can require an adult-use cannabis applicant licensee to enter into a Community Host Agreement or pay any consideration to the municipality other than reasonable zoning and permitting fees.

It will be interesting to see which counties within the State of New York take the option to completely prohibit any or all components of the new adult-use cannabis industry, as well as the financial ramifications associated with any such prohibition. It will also be interesting to see how municipalities attempt to regulate licensed retail dispensaries without making them unreasonably impracticable.

Please remember that under federal law, the possession, use, distribution or sale of non-hemp cannabis and cannabis-based products is illegal despite certain state laws that decriminalize such activity. While federal enforcement policy may defer to a state's laws and not enforce conflicting federal laws, the fact remains that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

