



*Memorandum*

TO: Mayor and Board of Trustees  
Richard Slingerland  
Joshua Ringel

FROM: Kathy Zalantis

DATE: 10-4-2021

RE: Questions Raised at Marijuana Presentation

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You asked that I respond questions raised by members of the public at the September 28, 2021 Marijuana Presentation. In italics are the questions (recorded by Village staff) and the answers follow:

*What are the BOT's thoughts on opting in vs opting out?*

The Village Board has not made any decisions on opting out. Nonetheless, to be clear, the Village Board only has to affirmatively act if it wants to opt-out of potentially having either or both retail dispensaries or on-site consumption establishments in the Village, because by default, retail dispensaries and on-site consumption establishments are allowed in every municipality in the State. If the Village Board does not opt-out by December 31, 2021, it is no longer able to do so in the future.

*How is the decision made to choose to do a permissive referendum or not? How exactly does a permissive referendum work?*

For the Village to opt-out of either or both retail dispensaries or on-site consumption establishments, the Village Board would have to adopt a local law before December 31, 2021. The local law would also be subject to permissive referendum, which is directed by State law and the Village Board has no discretion to choose not to have the law be subject to permissive referendum. For a Village, this means that if 20% of the electors (as shown on the register of electors for the previous general village election) sign and acknowledge a petition objecting to the local law, then the local law opting-out would have to then be approved by majority of those voting at a general or special election (see Village Law § 9-902(1)). If no petition is submitted, the local law would go into effect after the 30-day time period to file a petition expires (see Village Law § 9-902(1)).

*Are there any public areas (including businesses) where smoking is permitted already?*

As for public areas, such as Village sidewalks, smoking (both cigarettes and cannabis) is permitted, except in Village parks and recreation areas. New York Public Health Law Article 13-E regulates smoking and vaping "in certain public areas" and has

been amended to include references to cannabis. PHL § 1399-o, entitled “Smoking and Vaping Restrictions” and § 1399-o-1 entitled “Smoking and Vaping restrictions; Certain Outdoor Areas” contain an extensive list of areas (both indoor and outdoor) where smoking (both tobacco and cannabis) is prohibited. Prior to State’s adoption of the Marijuana Regulation and Taxation Act (“MRTA”), the Village Code § 221-9 prohibited smoking of tobacco products in Village parks, playgrounds or ball fields and this provision has been amended to also bar smoking of cannabis.

As a general rule, where tobacco smoking is allowed, so will cannabis smoking. However, while State law limits tobacco smoking in outdoor dining establishments to only certain areas (if: (1) the outside smoking area is no more than 25% of the outdoor seating capacity; (2) it is at least 3-feet away from designated outdoor non-smoking area; and (3) is designated as a smoking area with signage), State law prohibits smoking or vaping of cannabis in any outdoor eating areas of food establishments.

As for specific businesses, New York Public Health Law’s prohibitions against smoking do not apply to certain uses such as retail tobacco businesses and cigar bars under certain circumstances, and retail tobacco businesses are already allowed in certain districts in the Village. There is no specific zoning provision barring tobacco-based businesses.

*What does zoning mean in the context of Marijuana (what can Village do with regard to zoning)?*

Under State law, retail dispensaries or on-site consumption establishments cannot be within 500 feet of a school grounds or within 200 feet of a house of worship. Further, as part of the State licensing process, the municipality will have to be notified of an application pending within its boundaries and the municipality will have an opportunity to respond to the State Board and express whether the municipality believes the license should be granted or denied. The Board must respond to the municipality and explain how the municipality’s view was considered in the Board deciding whether to grant or deny the application.

While the Village is not authorized to adopt any law regulating the operation or licensure of these establishments, the Village Board can adopt local zoning regulations and regulations regarding the time/place/manner of those establishments so long as it does not make their operation “unreasonably impractical.” For example, the Village can adopt zoning legislation limiting retail dispensaries or on-site consumption establishments to certain districts, but the Village cannot make the zoning so restrictive that these uses would not be allowed anywhere in the Village.

*What should we expect in terms of “Traffic” for cannabis retail establishments? (In terms of traffic I would think foot and vehicular)?*

Like any other use, these types of uses would have to go through site plan approval (and potentially a special use permit) and one of the considerations for the land use boards will have to be traffic issues. As there are no traffic data for New York for these types of uses, the traffic analysis may have to rely upon data from other states where the use has been legal.

*Are Alcohol and Marijuana Mutually exclusive? (i.e. can alcohol and Marijuana be sold or consumed at same place of business)*

Under the State law, no cannabis retail licensee is permitted to sell alcoholic beverages and the State law prohibits someone from having a license or permit to sell alcoholic beverages on the same premises where cannabis products are sold. In addition, the State law also prohibits certain activities by an on-site consumption licensees including, but not limited to, gambling, exposing or simulating, contests, or fireworks . . .” and other activities prohibited under New York Alcoholic Beverage Control Law or other matters provided for by the State board.

*Are schools eligible to receive any of the sales tax revenue? If so, how are they affected if Village opts out?*

The State law addresses distribution of sales tax and it is unclear how funds will be distributed to other local government subdivisions (such as schools) that do not directly benefit from the sales tax, but such distribution would be governed by the State and would not be within the Village’s control or purview. But local municipalities that do not opt-out will have the potential to obtain sales tax revenue from retail sales of cannabis at these establishments. There will be a 4% sales tax that will go to the County. Quarterly, the County will distribute the funds with 25% of the tax staying with the County and 75% being distributed to the local municipalities (the town and incorporated village, if any) based upon the percentage of sales that took place within their municipality. If a municipality opts-out it will not receive this revenue.

*Will local dispensaries be able to sell weed online (e-commerce) or deliver locally, similar to food delivery?*

*How difficult will the licensing process be?*

*Will the State or Municipalities provide financial assistance to those disadvantaged from a social justice perspective?*

*Will retail be able to accept credit card/debit card and have bank accounts and what will municipalities (or state) do to facilitate this?*

The above questions go beyond the Village’s control and purview and are issues that will be governed by the State law and state agencies. Retail dispensaries and on-site consumption establishments will be required to be licensed, monitored and overseen by the Cannabis Control Board and the Office of Cannabis Management. The MRTA provides certain requirements for eligibility and the Cannabis Control Board will likely adopt additional regulations.