



Cannabis Applications & Considerations

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NJILGA

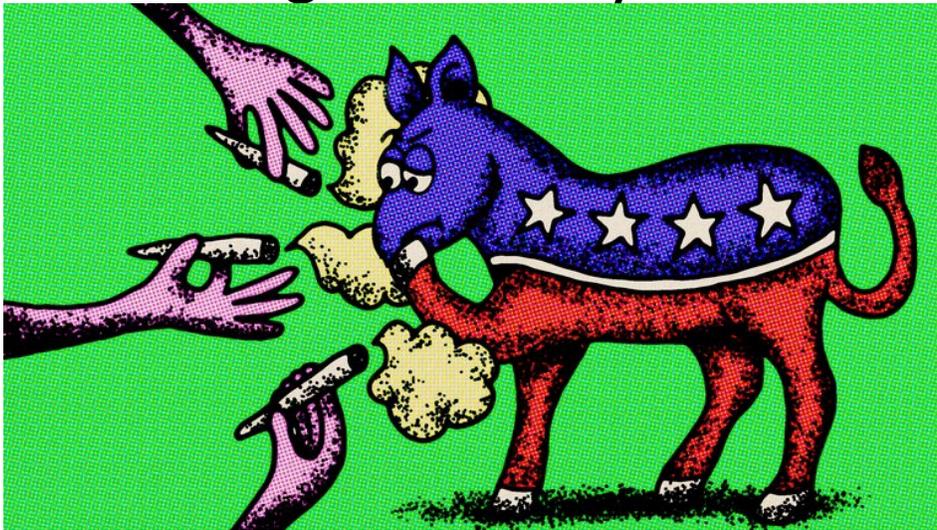
NEW JERSEY INSTITUTE OF
LOCAL GOVERNMENT ATTORNEYS

NJSBA Cannabis Law Special Committee
NJSBA Cannabis Municipal/Land Use



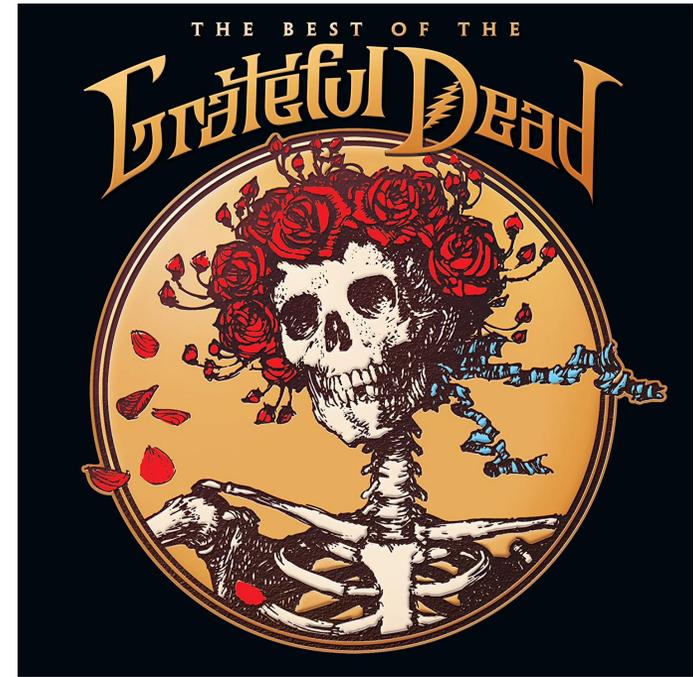
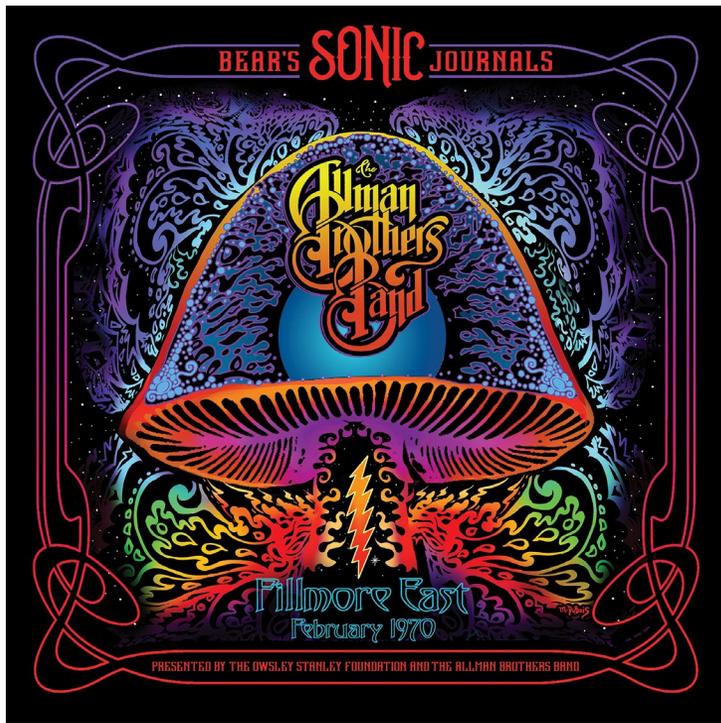
Pot, Politics and Land Use

- Councilman in TWO Towns
- Borough Attorney



- Zoning and Planning Board Attorney
- Zoning and Planning Board Chairman and Member





KEEP
CONTROL



Classes of Licenses

Class 1 – Cannabis Cultivator

Class 2 – Cannabis Manufacturer

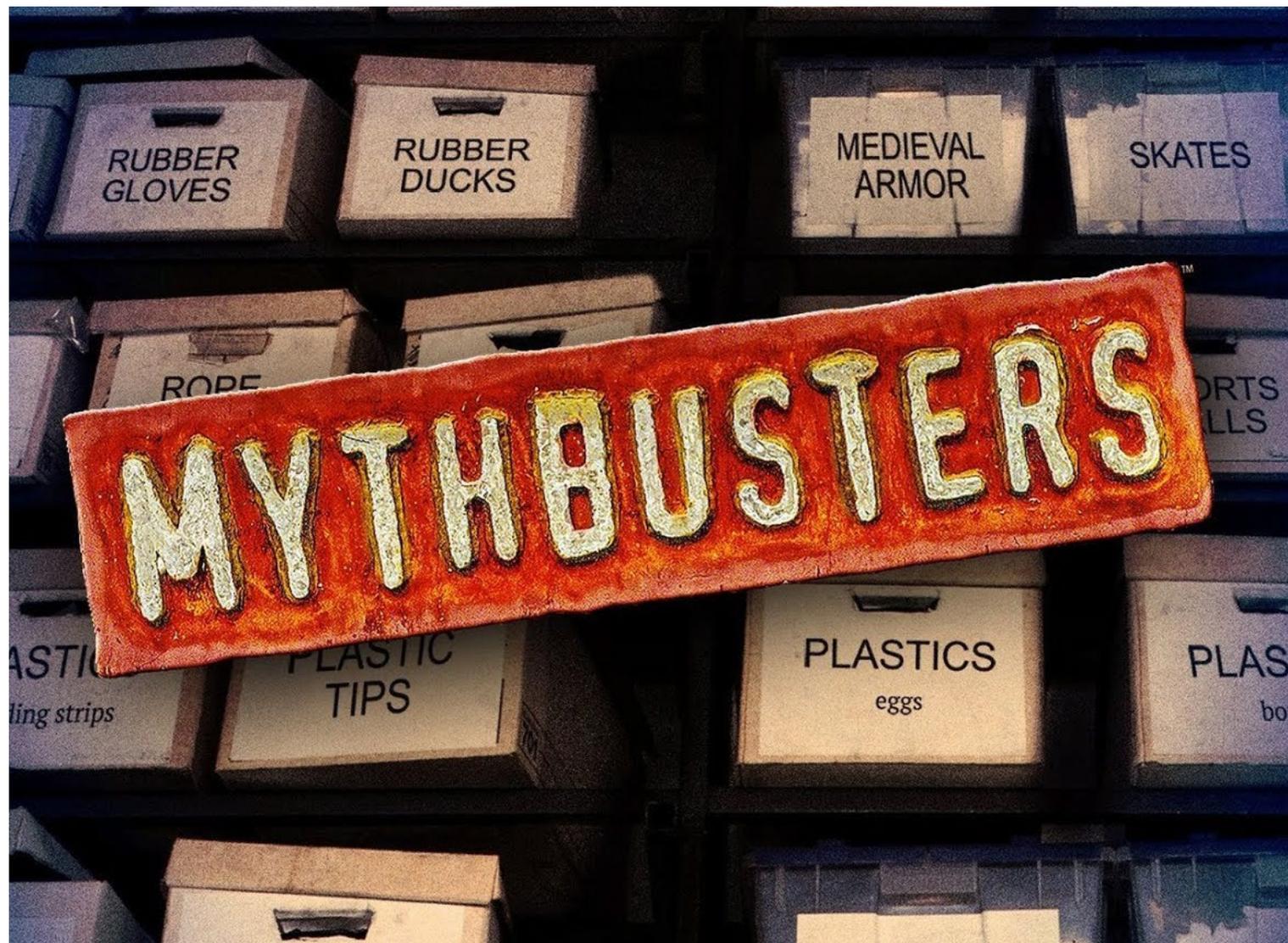
Class 3 – Cannabis Wholesaler

Class 4 – Cannabis Distributor

Class 5 – Cannabis Retailer

Class 6 – Cannabis Delivery Service





What are your residents most afraid of !@?



This Guy?



Blight on the neighborhood.

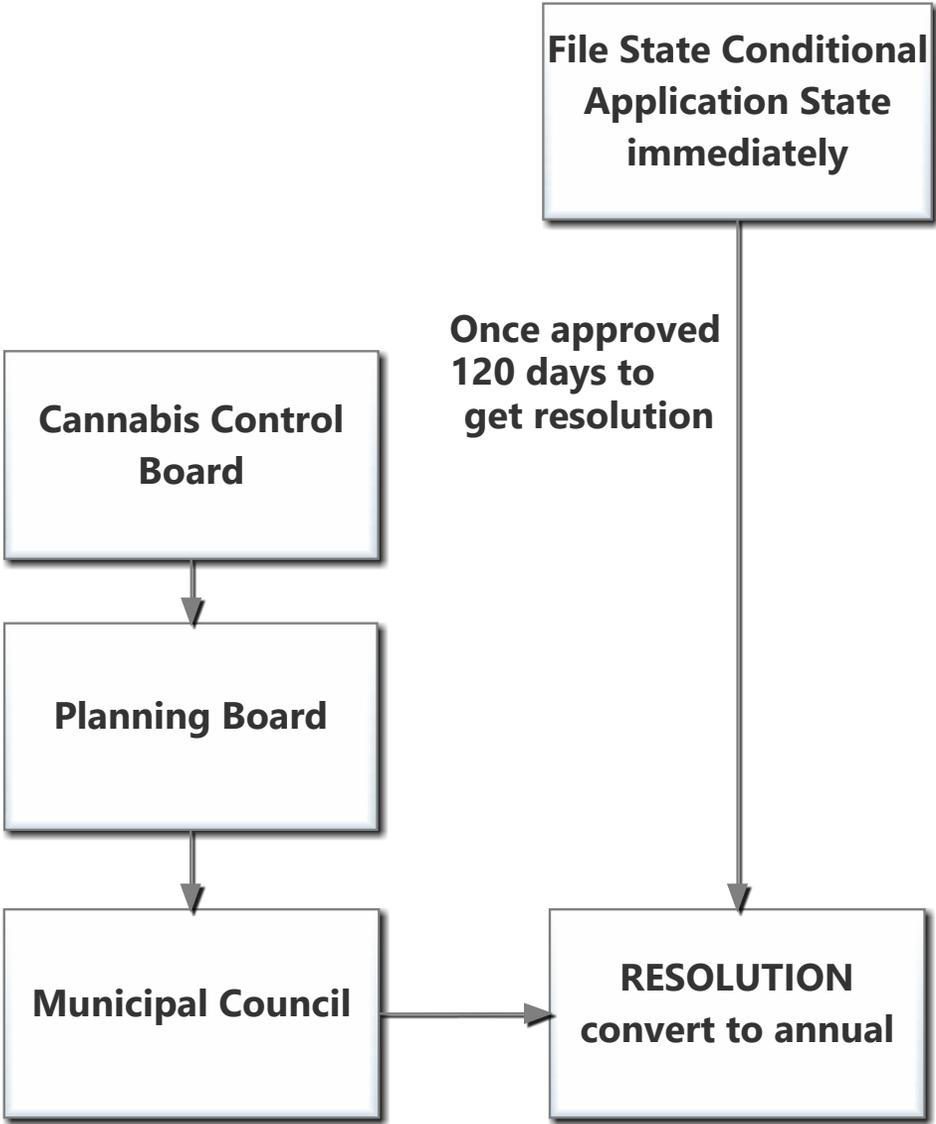
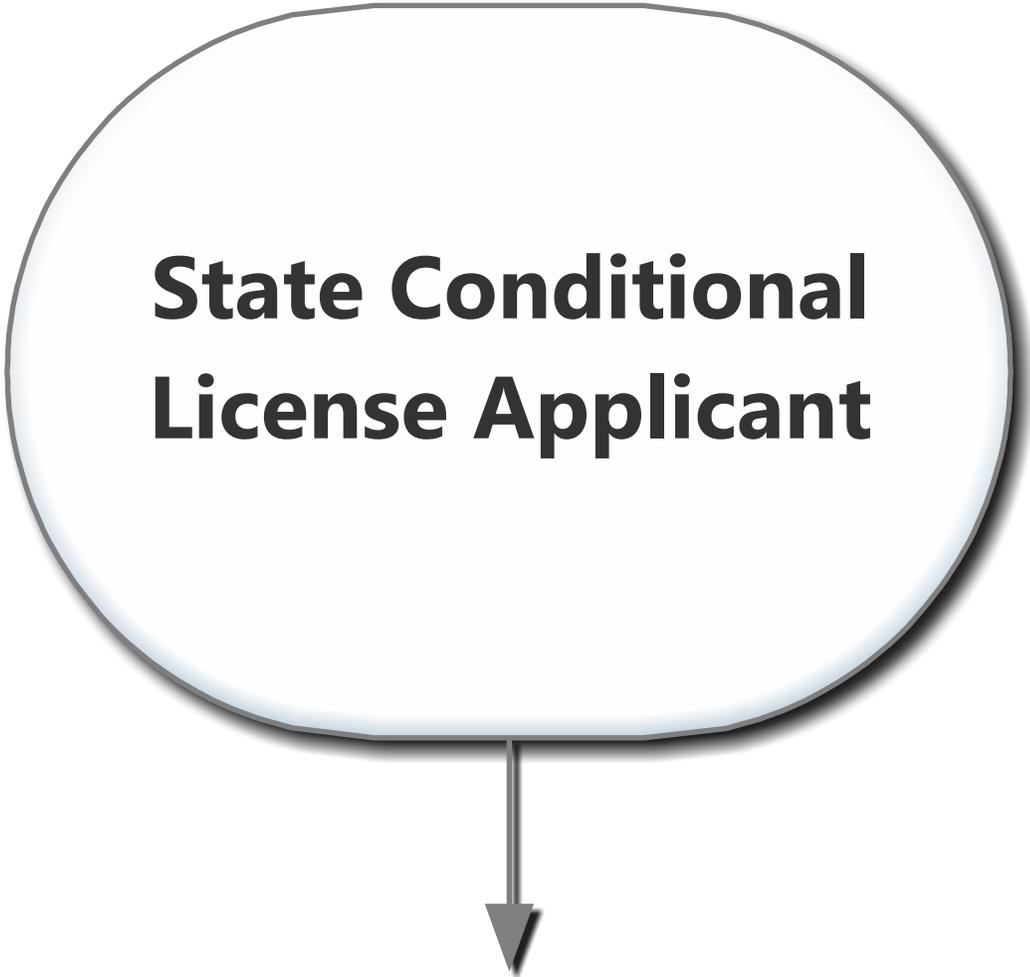
Bad influence on children.

Queueing at all hours.
Bad behavior.
Noise.
Smell.
Ahhhhhh!!!

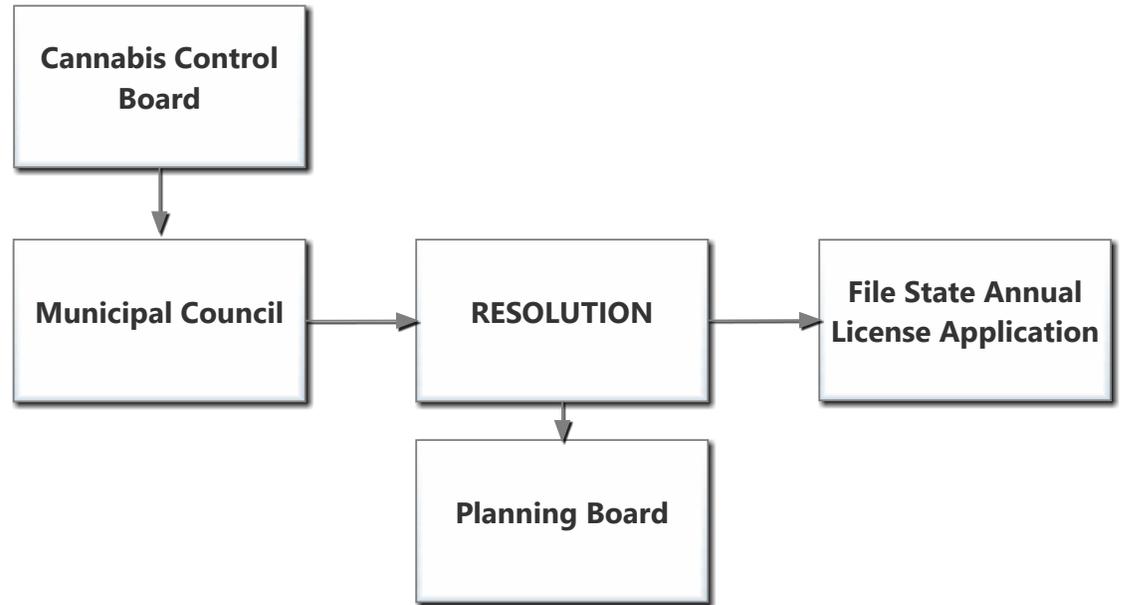


What if the shops look like this ?





State Annual License Applicant



STATE LICENSING TIMEFRAMES

Annual Licenses

- Once an application has been submitted to CRC the Commission must forward a copy to the municipality within **14 days**.
- Municipality must within **28-days** inform the Commission whether or not the application complies with local restrictions on times of operation, location, manner, and the number of cannabis businesses. Failure to respond within this time limit may result in CRC deeming the license application in compliance with any pertinent ordinance or regulation.

Conditional Licenses

- Once an application has been submitted to CRC the Commission must forward a copy to the municipality where the applicant desires to operate within **14 days**.
- Since conditional licenses do not require municipal approval, there is no requirement that a municipality respond within a certain timeframe.

Conversion of Conditional Licenses to Annual License

- No specific timeline for municipal review but would presumably be held to the same time limit as the annual license.



A Two-Tiered Process

Resolution of Support

- From the Governing Body
- This is the most **IMPORTANT** piece of the cannabis puzzle
- The CRC will not approve a State cannabis license without it hence this IS Time sensitive

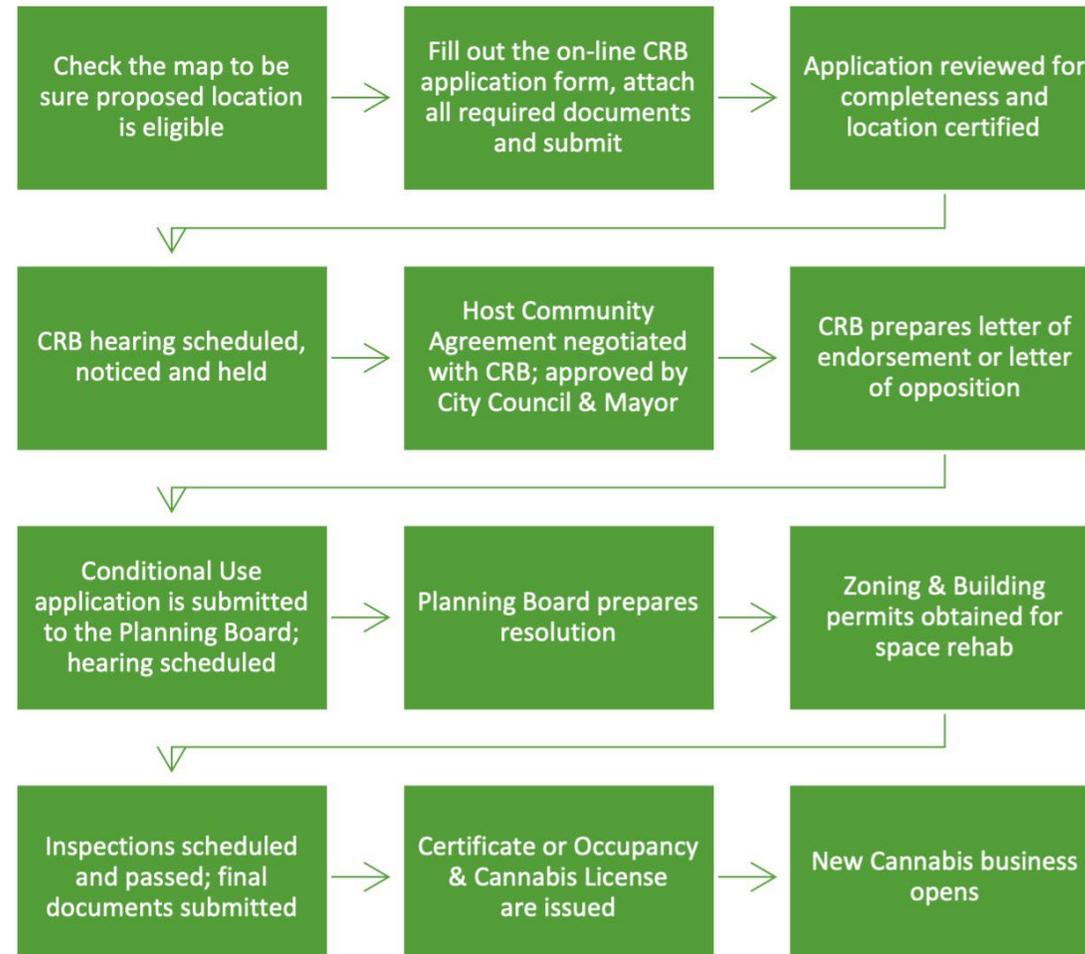
Local Licensing

- No need to reinvent the wheel
- Use your current licensing process
- This process is **NOT** really Time sensitive
- The cannabis establishment must first obtain the State license

HOBOKEN CANNABIS APPLICATION PROCESS

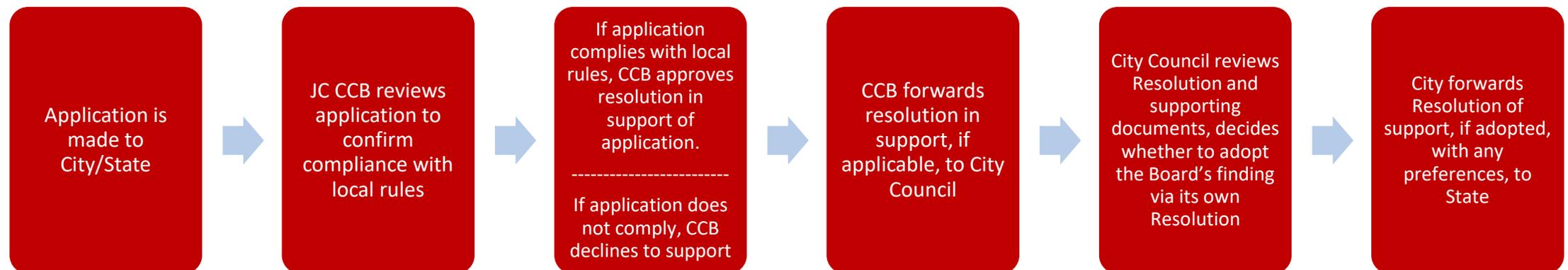
- Phone and Email Inquires from applicants
- Questions about new city ordinances
- Questions about state regulations
- New online forms
- New website page
- New cannabis map
- New Cannabis Review Board procedures
- New Board members

“once this opens up, your gonna get slammed with applications”



Jersey City – Cannabis Application Process

- The State is ultimately responsible for issuing licenses for the operation of all cannabis establishments/distributors.
- The City and CCB will review these applications to ensure compliance with local rules and regulations.
- If the application complies with local rules and regulations, the CCB will notify the State that it supports the application, via board Resolution adopted by City Council.



Best Practices, i.e., ways to make your life easier.

- Set up a web page. Include a map that shows the zones where cannabis business can locate.
- Add a map that shows the zones where cannabis businesses can locate, and where current businesses (or pending applicants) already are.
- Create an Applicant Scorecard. CAREFUL HERE!
- Put together a FAQ and make sure everyone in the municipality that might get a call from a resident has a copy.
- Know who in your municipality is handling cannabis application so you can redirect applicants appropriately.
- Be sure to forward any/all communications from the State CRC to those persons overseeing cannabis applications/licenses in your community ASAP. Many are time sensitive.
- Know cannabis application OPRA Rules. Many documents submitted to the municipality as part of a complete application are **NOT public records**.

Personal Use Cannabis Rules

- Within 28 days of receipt of a license application from the CRC, the municipality shall inform the CRC that the license application complies with the town's ordinances
- Failure may result in the CRC deeming the application in compliance with the town's ordinances
- A municipality can provide written approval for a proposed expanded ATC which approval is based on a determination that the proposed establishment complies with the municipality's restrictions on the number of establishments, as well as the location, manner, and times of operation of establishments or distributors enacted pursuant to section 31 of P.L.2021, c. 16 (C.24:61-45).
- Any State or local law enforcement or regulatory authority or agency may request that cannabis business personnel performing a transport or delivery present a Cannabis Business Identification Card or a copy of a transport order or delivery request.
- In no case may a municipality restrict the transportation of cannabis items through or delivery of cannabis items within the municipality by adopting an ordinance or any other measure. Any such restriction shall be deemed void and unenforceable.
- § 17:30-10.1 CANNABIS CULTIVATOR PREMISES - In no case shall a cannabis cultivator operate or be located on land that is valued, assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

Limitations of Locations

Grocery stores

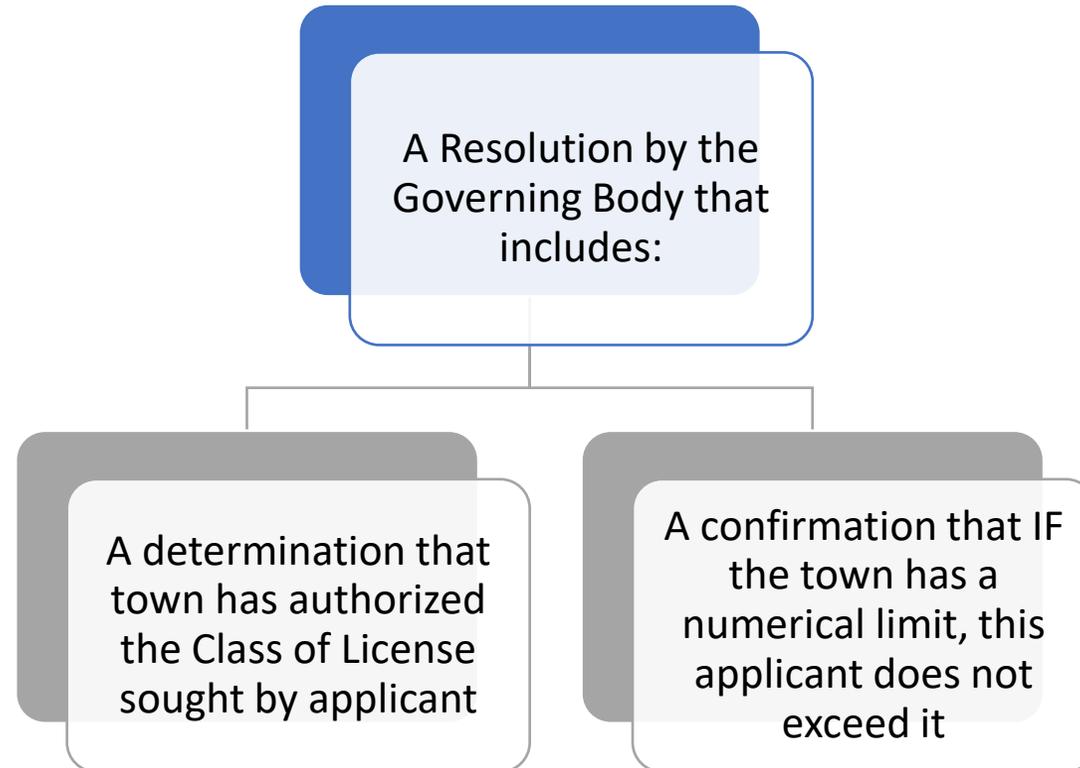
Delis

Indoor food
markets

Other stores
engaging in retail
food

Premises licensed
for retail sales of
alcoholic beverages

PROOF OF LOCAL SUPPORT – Governing Body





PROOF OF
LOCAL
SUPPORT –
Zoning
Official

A letter or affidavit from appropriate municipal officials :

- The location will conform to municipal zoning requirements
- In other words, the site is properly zoned for the Cannabis Business
- A Zoning Permit – many towns have an application process to get this

How Does a Municipality Handle a Cannabis Zoning Application?

Odor

Location near schools, parks, etc. or other marijuana facilities

Signage/ Façade/ Design

Neighborhood Impact

Security/Public Safety

Prohibiting Sales to Minors

Consumption on premises/Smoking outdoors

Traffic or parking issues

Municipal incurred costs of enforcement

Trash Disposal

Local Cannabis Tax

By ordinance

Cannot exceed:

- 2% cannabis cultivator
- 2% cannabis manufacture
- 1% cannabis wholesaler
- 2% cannabis retailer

Percentage based on receipts on each sale

How Much \$ For The Town?

Retail - \$9 million to \$12 million gross per year = \$180,000 to \$240,000 (1500-3000 sq ft)

Cultivation - \$12 million to \$15 Million for 15k sq ft gross per year = \$240,000 - \$300,000 per year (16-25 months to ramp up)

Manufacturing - \$20 million to \$25 Million gross per year = \$400,000 - \$500,000 per year

Any other potential benefits for The Town?

Local Employment - Most towns will require that the cannabis business hire a certain % of local residents

Local Businesses – There is typically an increase in sales for local businesses due to the patrons of the dispensaries

Positive Community Impact – Cannabis Businesses are required to show and make a positive community impact through education, donations, expungement clinics, volunteerism

Commercial Vacancies – there will be a significant decrease in commercial vacancies. Build out will increase assessments.



CANNABIS REVIEW BOARDS

RECORD KEEPING

- OPRAs of Board Member and Board Professionals Emails and Texts
- Board members should not email/text each other about applications
- Board members should not discuss applications with the public
- Keep track of dates- submission, completeness
- Transcripts of meetings



50th ANNIVERSARY EDITION

CLINT EASTWOOD



**THE
GOOD** **THE
BAD** and **THE
UGLY**

co-starring
LEE VAN CLEEF

also starring
ELI WALLACH
in the role of TUCO

directed by
SERGIO LEONE

Host Community Agreements

It is not readily apparent to us that there is something wrong or unethical about the HCAs in question. Indeed, such agreements are actually required in a similar Massachusetts program. Massachusetts requires applicants for medical marijuana permits to negotiate HCAs with municipalities where they propose to locate. 935 Mass. Code Regs. 500.101(1)(a)(8) – (2019). An HCA “may include a community impact fee for the host community,” provided that the fee is “reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment.” Mass. Gen. Laws ch. 94G, § 3(d) – (2017). Although the Compassionate Use Act does not contain those requirements, and New Jersey need not model its methods after Massachusetts's, it is worth noting that another state has found HCAs valuable to the expansion of its program, rather than rejecting them as unfair tactics by permit applicants.

Matter of the Application for Medicinal Marijuana Alternative Treatment Ctr. for Pangaea Health & Wellness, LLC, 465 N.J. Super. 343, 396, 243 A.3d 688, 719 (App. Div. 2020)

(i) A county, municipality, or county or municipal government official shall neither solicit nor receive from a cannabis business, and a cannabis business shall not offer, anything of value, including a contribution to a political campaign, political party, or political organization as part of a **host community agreement**, or demand that any payment be made to a designated official, group, or organization in exchange for zoning approval, proof of local support, or written approval for such cannabis business, or take any other action that would violate N.J.S.A. 40A:9-22.5 of the Local Government Ethics Law. N.J. Admin. Code § 17:30-5.1(i)

Host Community Agreements

Mass Court said: “Reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment”

- Recoup municipal costs: CFO auditing 2%, police, compliance with local laws
- Employment Opportunities
 - Applicant to sponsor job hiring fairs
 - Attract local residents, women & people of color, reentry candidates
 - Labor Protection Agreement
- Community Education
 - Engage in community outreach events to educate
- Provide State matching funds for Municipality’s drug and alcohol prevention organizations
- Make contributions to local charities and schools, first responders (police, fire or first aid), digital divide organizations, participate in community cleanup or rehabilitation initiatives
- MUST NOT BE a money grab vehicle – build us a new Rec Center or 4 street sweepers
- MUST NOT BE “give us this \$ and we will act favorably on the application” (a/k/a a bribe)

Host Community Agreements Wait a Minute?

- Letter from Cannabis Business' Attorney AFTER license issued:
 - We are not paying. See you in court. No cannabis business will get to operate for years. Deep pockets will ask for a stay until this issue is resolved. Three years later...
 - Tell us exactly where you are spending the money to the dollar – itemized list of costs
- Not every business can afford a HCA
 - Micro business, social equity applicants
 - Are you asking applicants who were jailed by your town to now pay \$ to benefit the town?
- Why should a cannabis business have to pay more than any other type of business?
- There are no provisions in the statutes or the regulations authorizing a HCA. Nothing preventing it either. Could it be implicitly authorized under the MLUL? Akin to a Developers Agreement?
- This is an agreement. The applicant and town bargain and negotiate this agreement. HCA conditions or “pledges” are not mandatory
- Can the town ask the successful applicant license holder to defend and indemnify the town when the unsuccessful applicant sues them in court?

Comments, Suggestions & Ideas

Require some level of site control. Even a LOI. Change ordinances to require notice to residents within 200 Feet? This is Due Process at its finest.

Change ordinance to require a Host Community Agreement. Negotiation is with your cannabis board BUT final authority is ALWAYS with the Municipal Council.

A cannabis board and PB “vet” and review the cannabis application BUT the final authority to issue the ALL-important Resolution remains in the sole discretion of the Municipal Council.

Comments, Suggestions & Ideas

Should there be an appeal process at the municipal level for an aggrieved applicant?

Letters of Support have no place in this adult use cannabis process

Your licensing process should be annual. Keep tabs on the applicant. Are they complying? The annual license renewal will correct deficiencies.

Municipal Government Officials

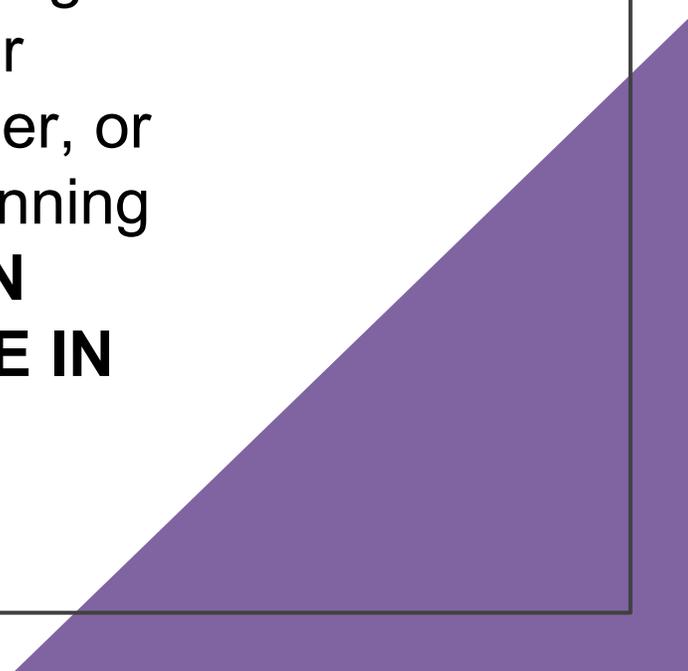
N.J. A.C. § 17:30-5.1(i)

- Do not solicit anything of value from the Cannabis Business
- The Cannabis Business shall NOT offer anything of value
 - In exchange for zoning approval, proof of local support, or written approval for the Cannabis Business or take any action that would violate N.J.S.A. 40A:9-22.5 (Code of ethics for local government officers or employees under jurisdiction of local finance board)

Municipal Government Officials

N.J.S.A. § 52:13D-17.2

Any member of the governing body or the municipal judge of a municipality, any member of the planning board or zoning board of adjustment, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment **CAN'T HAVE AN INTEREST IN A CANNABIS BUSINESS ANYWHERE IN THE STATE IF YOUR TOWN HAS OPTED-IN!**



SOME DIFFERENCES BETWEEN MEDICAL (ATC) AND ADULT USE CANNABIS

ALTERNATIVE TREATMENT CENTERS

- **MEDICAL PATIENTS CAN GET UP TO 3 OUNCES FOR A 30-DAY PERIOD**
- **MEDICINAL CANNABIS WILL NOT BE SUBJECT TO SALES TAX AS OF JULY 1, 2022**
- **THERE IS NO AUTHORITY WITHIN JAKE'S LAW (MEDICAL USE) FOR A TOWN TO LEVY A MUNICIPAL TAX OTHER THAN AT DISPENSING**
- **MEDICINAL CANNABIS IS PRIORITIZED OVER AU CANNABIS**
- **CAN HAVE UP TO 3 DISPENSARIES**

ADULT/RECREATIONAL USE

- **ADULT-USE LICENSES CANNOT SELL A CUSTOMER MORE THAN 1 OUNCE IN A DAY, BUT NO 30-DAY PERIOD LIMITATION**
- **6.625% OR URBAN ENTERPRISE ZONE IS HALF**
- **ADULT USE PERMITS UP TO 2% AT ANY POINT IN THE SUPPLY CHAIN**
- **ADULT IS 1 DISPENSARY**

LITIGATION

- Your application scoring was completely inconsistent
- Your decision to approve one cannabis business over another was arbitrary and bias
- Your application considerations were not within your authority or purview





MAYORS AND COUNCIL MEMBERS

Questions about Cannabis in your Municipality?
We can help...

The NJ Cannabis Laws present a plethora of issues regarding cannabis for local elected officials to consider.

Is cannabis right for your town?

What cannabis classes of licenses do you want for your town?

Where are you going to allow those cannabis businesses?

What type of zoning are you going to impose?

The complex list of issues seems almost endless. We will guide you.

Cannabis Legal Services

- Ordinances
- Licensing
- Application Review
- Compliance
- Taxation
- Zoning
- Lawsuit Avoidance Strategies
- Host Community Agreements



Cannabis Related Services

- Application Process Development
- Application Scoring
- Cost Recovery Analysis
- Provide Subject Matter Expertise



"A knowledge-based website designed specifically for municipalities permitting or prohibiting cannabis"



30 years experience practicing municipal and land use law representing numerous municipalities, planning boards, and boards of adjustment.

- Trustee - NJ Institute of Local Government Attorneys
- Member of the NJ State Bar Cannabis Law Committee since 2018
- Co-Chair of the NJ State Bar Municipal Cannabis Sub-Committee

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