

Introduction

With the distinct possibility, even likelihood, that the State of New Jersey will legalize the adult use of cannabis, the New Jersey State League of Municipalities (NJLM) established its own task force to examine the discreet issues associated with the proposed legalization of marijuana for adults. The Task Force was broke into four subcommittees to focus on discrete issues, including:

1. Budget and Finance
2. Land Use
3. Law Enforcement
4. Quality of Life/Public Health;

Each subcommittee convened by conference call through the spring of 2018 and arrived at its own separate set of recommendations.

Throughout his campaign for Governor, Phil Murphy has advocated for legalization and since taking office, over two dozen (to date) municipalities have passed ordinances outlawing commercial retail and/or cultivation within its borders. Concurrently, many local leaders have expressed support and indicated that they will welcome commercial retail sites for cannabis. Our own task force is likewise divided. One subcommittee, the Quality of Life and Public Health Subcommittee, recommended opposition to legalization, instead calling for the State Legislation to pursue decriminalization, the expansion of medical use and allow for more research and public education before consideration of legalization.

The three other subcommittees did not take a position on legalization and instead prepared recommendations for consideration in the event that the adult use of marijuana is legalized.

This issue elicits passion and strong feelings, positions that do not fall along traditional partisan (or non-partisan) lines. From our ongoing communication with our members, it is clear to us that there is no clear municipal consensus on the issue of legalization. Without a clear consensus among its membership, the League does not take a position on legalization.

There are, however, unifying issues for municipal governments that we believe must be addressed if the Administration and the State Legislature proceed with legalization. The following recommendations, therefore, are based on the input and comments received from the respective subcommittees in the event that the State Legislature and the Administration proceed with the legalization of the adult use of marijuana.

Since there was a great deal of consistency and overlap among the subcommittee recommendation, a number have been synthesized and categorized. For sake of transparency, we are including as appendices the reports/recommendations of each subcommittee and additional background information.

In our respective roles as Chair and Vice Chair of the NJLM Marijuana Task Force, we offer the following recommendations to the State Legislature and Administration.

James L. Cassella,
Mayor, East Rutherford
President, NJLM

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Mayor, Clinton Town
3rd Vice President, NJLM

November 1, 2018

SUMMARY OF MAJOR RECOMMENDATIONS

Recommendation: Municipalities must be Fully Funded to Meets Costs

- **Lock Box for Revenues:** Revenues obtained from taxes or fees levied upon legalized marijuana should be put in a lock box to assure these revenues will be used for its stated purpose. On this issue, the Budget and Finance subcommittee recommends that legislation should include language guaranteeing that municipalities will receive dedicated revenue. It is suggested a “poison pill” provision, similar to Energy Tax Receipts be included in any proposed legislation.

The Quality of Life subcommittee suggests an iron-clad guarantee and that these revenues should be dedicated by the State Constitution.

Both recommendations result from the State’s unfortunate history of diverting revenues from local governments for State budget purposes. Be it by a legislative “poison pill” or by constitutional amendment, any legislation that legalizes the adult use of marijuana should include a funding “lock box” to discourage or prevent diversion of funding.

- **Implementation Costs:** Municipalities should receive additional revenue from the State for implementation costs related to the legalization of marijuana. Implementation costs will include, but are not limited to, law enforcement, health inspections, drug education, social services, and court expenses. Since municipal governments will be on the front line for enforcement, municipalities should receive at a minimum 50% of the tax revenue collected from recreational and medical marijuana. Further, based on the models in other States that have legalized cannabis, the Legislature should provide a local option tax of up to 7%, at the discretion of the municipality, funding that should flow directly to municipalities.
- **CAP Exception:** There should be an exception to the 2% Property Tax Levy Cap (P.L. 2010, c. 4) for expenses related to the administration, enforcement, and social services as a result of the legalization of marijuana.
- **Public Education & Enforcement:** A portion of the State revenue received from taxation and licensing of recreational marijuana should be dedicated to education and enforcement.

Recommendation: Local Control Must Be Preserved

Municipal governments are on the front line of enforcement and that fact must be considered in the current discussion about marijuana legalization.

- **Local Zoning:** Any facility, whether it be for retail, cultivation or is related in any form to legalized cannabis, *must comply with all local zoning and local ordinances*; any such commercial enterprise should operate on a level-playing field with other businesses.

Any facility locating in a municipality must agree to the conditions that the municipality sees as necessary, which could include, but is not limited to, local licensing, facility security protocols and personnel, and fees to offset any impacts on the local budget.

Further, it should be clarified that marijuana, in particular medical marijuana, facilities *are not considered an inherently beneficial use under the Municipal Land Use Law (MLUL)*. Under the MLUL, those seeking a use variance to municipal zoning are at an advantage if they are considered an inherently beneficial use as they are presumed to have met the positive criteria needed to grant a use variance. Hospitals and other medical facilities are considered an inherently beneficial use and because of this enjoy such an advantage when seeking a use variance.

Any proposed legislation should clearly exclude any form of marijuana dispensary from being considered an inherently beneficial use. This allows for better municipal government control of local zoning and use regulations.

- **Option to ban the sale of recreational marijuana within its borders.** Each municipality must be empowered to decide its level of involvement, if any, in the industry. The local governing body must be given the right to opt in, and to opt in on each individual aspect of the industry—growth, production/manufacturing, distribution, and/or retail sales.
- **Limit the permissible location of marijuana facilities to an appropriate distance from a municipality that chooses to opt out of allowing the sale of recreational marijuana:** The opt-in provision may lead to circumstances where neighboring municipalities have differing policies regarding the sale of marijuana. Thus, allowing marijuana facilities to be closely located, even just over the border, of a municipality which has banned the sale. This has the potential to lead to conflict between neighboring municipalities. To avoid this potential conflict, *it is recommended that in any case where a municipality allows marijuana facilities, those facilities should not be permitted to be located within a particular distance from the border of any municipality that bans such marijuana facilities unless the banning municipality consents.*
- **Enforcement:** Ensure that mechanisms are in place that will give municipalities flexibility in administering discipline against license holders when violations occur, *including the ability to revoke a license.* The municipality must have the authority to suspend or revoke licenses issued by the State.

Much like how progressive discipline exists for liquor license holders, a similar scheme should be implemented for marijuana licenses holders. This provides municipalities the

flexibility to work with marijuana license holders to ensure that regulations are being followed without relying solely on a draconian discipline system. Similarly, municipalities should be given the authority to revoke the license of a marijuana facility which fails to maintain the legally required, operational standards.

- **Right to Farm is not applicable.** To be eligible for protections under the Right to Farm Act, an agricultural operation or practice must be in compliance with all relevant federal or State statutes or rules and regulations. Because the growing and cultivation of marijuana is still prohibited at the federal level, it stands to reason that an agricultural operation growing or cultivating marijuana would not be afforded the protections found in the Right to Farm Act. This analysis is bolstered when viewed together with the guidance issued by the Department of Agriculture regarding the application of the Right to Farm Act to the growing and cultivation of medical marijuana, which draws the same conclusion. *Thus, any legislation must ensure that the growing and cultivation of marijuana is not afforded protections under the Right to Farm Act.*

Notwithstanding the current inapplicability of the Right to Farm Act to medical and recreational marijuana, it may be necessary to act now to ensure that the growing and cultivating of marijuana will not in the future, be afforded Right to Farm Act protections.

- **Limit the ability of marijuana to be considered an agricultural crop in order to prevent it from being grown and processed on preserved farmland.** Currently, NJ agricultural law considers marijuana an agricultural crop, therefore allowing it to be grown and processed on a preserved farm. However, much like the limitations on the Right to Farm Act, marijuana cannot be grown or processed on any farm that has been preserved with Federal Farm and Ranch Lands Protection Program funding, due to marijuana's illegal status under current federal law.
- **Ensure that the sale of marijuana can be done only at specifically regulated locations and prevent any workaround which would allow a farm to set up a farmers' market, farm stand, or other similar setup which would act to undermine this.** Currently, the farmland preservation Deed of Easement allows for the "wholesale and retail marketing" of crops on a preserved farm. This would seemingly allow any preserved farm which grows marijuana to sell its crops through wholesale or retail means. Any legislation should ensure that recreational marijuana is sold only in those locations approved by municipalities and ensure that there is no work around to this, similar to how medical marijuana has been regulated.
- **Local Law Enforcement:** The State of New Jersey must provide local law enforcement, in all municipalities, with the tools, training, and financial support that will be needed to protect the public.

The State must also provide compensation for costs related to the storage of evidence and contraband, any new technologies that are needed for enforcement and prosecutorial purposes, and any other investments that occur, due to legalization.

Recommendation: State Licensing and Enforcement

- In the event that New Jersey does in fact legalize recreational marijuana, *there should be full disclosure, transparency and a background review in order to obtain a license*. This criteria should be strictly enforced and established by statute.
- The State Department of Health should promulgate through regulation of *appropriate labeling standards as well as standards as for potency levels*. The State should promulgate through regulation appropriate price controls and ranges as a condition of a license. This is intended to mitigate efforts by the illegal market to undercut the market.
- Further, before legalization is advanced, public policy makers must contemplate how current dealers will react, drug trafficking, and how the illegal market will function. Appropriate resources must be included.

Appendix A, NJLM Marijuana Legalization Task Force

Budget & Finance Subcommittee Report

Members of the Committee: Hope Mayor Tim McDonough, Lambertville Mayor David DelVecchio, Downe Mayor Robert Campbell, Flemington Mayor Phil Greiner, Linden 3rd Ward Councilman Peter Brown, Bloomfield Administrator Matt Watkins, and Wharton Administrator/Chief Financial Officer Jon Rheinhardt.

Preface:

The Budget and Finance Subcommittee of the NJLM Recreational Marijuana Taskforce focused on the budgetary and financial issues that may arise from the legalization of recreational marijuana. The committee examined practices in other states that have legalized recreational marijuana as a guidepost.

It is important to note when discussing lessons learned from other states that have legalized recreational marijuana:

- 3% of taxes collected was not enough to recoup municipal cost;
- It is imperative to retain as much local control as possible;
- There was an increase in drug DUI cases, that have been a challenge to enforce; and
- One state noted an increase in edible use by minors that was becoming a local challenge

Recommendations, if legalization occurs:

1. Legislation should include language guaranteeing that municipalities will receive dedicated revenue. It is suggested a “poison pill” provision, similar to Energy Tax Receipts be included in any propose legislation.
2. Municipalities should receive additional revenue from the State for implementation cost related to the legalization of marijuana. Implementation costs will include, but are not limited to, law enforcement, health inspections, drug education, social services, and court expenses.
3. There should be an exception to the 2% Property Tax Levy Cap (P.L. 2010, c. 4) for expenses related to the administration, enforcement, and social services as a result of the legalization of marijuana.
4. A portion of the State revenue received from taxation and licensing of recreational marijuana should be dedicated to education and enforcement.
5. Municipalities should receive at a minimum 50% of the tax revenue collected from recreational and medical marijuana.

Appendix B NJLM Marijuana Legalization Task Force

Land Use Subcommittee Recommendations

Preface:

The Land Use Subcommittee of the NJLM Recreational Marijuana Taskforce met on three separate occasions to discuss the land use implications and concerns surrounding the legalization of recreational marijuana. While the Subcommittee's focus was on proposed bill S-830, other, more general, land use concerns were also addressed.

The following issues were brought up and subsequently addressed with further recommendations.

- 1) Will the growing and cultivation of marijuana as a crop implicate the Right to Farm Act?
- 2) Can marijuana be grown on preserved farmland?
- 3) Can preserved farmlands set up "farmers markets" to sell marijuana?
- 4) It is inevitable that neighboring towns will have conflicting policies regarding the sale and cultivation of marijuana. Is there a system in place which would deal with potential conflicts involving marijuana facilities being allowed along municipal borders? Similarly, is there a system in place which would avoid these kinds of conflicts?
- 5) Is there an argument to be made that either recreational or medical marijuana would be considered an inherently beneficial use under the MLUL?
- 6) Will there be a mechanism like liquor licenses where a municipality can invoke "progressive discipline" on a local permit/license and subsequently revoke it, if necessary?

Recommendations:

- 1) **Ensure that the growing and cultivation of marijuana is not afforded protections under the Right to Farm Act.** To be eligible for protections under the Right to Farm Act, an agricultural operation or practice must be in compliance with all relevant federal or State statutes or rules and regulations. Because the growing and cultivation of marijuana is still prohibited at the federal level, it stands to reason that an agricultural operation growing or cultivating marijuana would not be afforded the protections found in the Right to Farm Act. This analysis is bolstered when viewed together with the guidance issued by the Department of Agriculture regarding the application of the Right to Farm Act to the growing and cultivation of medical marijuana, which draws the same conclusion.

Notwithstanding the current inapplicability of the Right to Farm Act to medical and recreational marijuana, it may be necessary to act now to ensure that the growing and cultivating of marijuana will not in the future, be afforded Right to Farm Act protections.

- 2) **Limit the ability of marijuana to be considered an agricultural crop in order to prevent it from being grown and processed on preserved farmland.** Currently, NJ agricultural law considers marijuana an agricultural crop, therefore allowing it to be grown and processed on a preserved farm. However, much like the limitations on the Right to Farm act, marijuana cannot be grown or processed on any farm that has been preserved with federal Farm and Ranch Lands Protection Program funding, due to marijuana's illegal status under current federal law.
- 3) **Ensure that the sale of marijuana can be done only at specifically regulated locations and prevent any workaround which would allow a farm to set up a farmers market, farm stand, or other similar setup which would act to undermine this.** Currently, the farmland preservation Deed of Easement allows for the "wholesale and retail marketing" of crops on a preserved farm. This would seemingly allow any preserved farm which grows marijuana to sell its crops through wholesale or retail means.

A clarification needs to be made to ensure that recreational marijuana is sold only in those locations approved by municipalities and to ensure that there is no work around to this, similar to how medical marijuana has been regulated.

- 4) **Limit the permissible location of marijuana facilities to an appropriate distance from a municipality that chooses to opt out of allowing the sale of recreational marijuana.** Any bill legalizing marijuana should give municipalities the option to ban the sale of recreational marijuana within its borders. This however, may lead to circumstances where neighboring municipalities have differing policies regarding the sale of marijuana. Thus, allowing marijuana facilities to be closely located, even just over the border, of a municipality which has banned the sale. This has the potential to lead to conflict between neighboring municipalities. To avoid this potential conflict it is recommended that in any case where a municipality allows marijuana facilities, those facilities should not be permitted to be located within a particular distance from the border of any municipality that bans such marijuana facilities unless the banning municipality consents.
- 5) **It should be clarified that marijuana, in particular medical marijuana, facilities are not considered an inherently beneficial use under the Municipal Land Use Law (MLUL).** Under the MLUL, those seeking a use variance to municipal zoning are at an advantage if they are considered an inherently beneficial use as they are presumed to have met the positive criteria needed to grant a use variance. Hospitals and other medical facilities are considered an inherently beneficial use and because of this enjoy such an advantage when seeking a use variance.

Any proposed legislation should clearly exclude any form of marijuana dispensary from being considered an inherently beneficial use. This allows for better municipal government control of local zoning and use regulations.

- 6) **Ensure that mechanisms are in place that will give municipalities flexibility in administering discipline against license holders when violations occur, including the ability to revoke a license.** Much like how progressive discipline exists for liquor license holders, a similar scheme should be implemented for marijuana licenses holders. This provides municipalities the flexibility to work with marijuana license holders to ensure that regulations are being followed without relying solely on a draconian discipline system. Similarly, municipalities should be given the authority to revoke the license of a marijuana facility which fails to maintain the legally required, operational standards.

Appendix C NJLM Marijuana Legalization Task Force Public Safety Subcommittee

Draft Report and Recommendation for Discussion

Municipalities will face new public safety challenges, if the production, manufacturing, distribution and retail sales of cannabis and cannabis-based products are legalized and regulated by the State. All facilities related to the trade will be inviting targets for the criminal elements in society. Increased policing costs in host municipalities are inevitable. But other towns will also face challenges. Cannabis related impaired driving offenses will occur throughout the State. And they are difficult to prove and prosecute. Further, the illegal resale of cannabis products – even to minors – can occur anywhere. Safeguards need to be put in place to protect our innocent citizens from cannabis criminals, ordinary criminals targeting cannabis businesses and consumers, cannabis-induced impaired driving, and public intoxication and other public nuisance incidents. Safeguards will also be needed to protect our taxpayers from increased public safety costs.

What follows is a list of possible recommendations. Subcommittee Members were invited to suggest other recommendation and to offer amendments to these.

When we have a reasonably complete set of proposals, a conference call of the subcommittee can be scheduled to discuss and decide on those. We will then be in a position to present our Report to the full Committee.

If legalization occurs:

1. Each municipality must be empowered to decide its level of involvement, if any, in the industry. The local governing body must be given the right to opt in; and to opt in on each individual aspect of the industry – growth, production/manufacturing, distribution, and/or retail sales.
2. Any facility locating in a municipality must agree to the conditions that the municipality sees as necessary, which could include, but not limited to, local licensing, facility security protocols and personnel, and fees to offset any impacts on the local budget.
3. The municipality must have the authority to suspend or revoke licenses issued by the State.
4. The State of New Jersey must provide local law enforcement, in all municipalities, with the tools, training and financial support that will be needed to protect the public.
5. The State must also provide compensation for costs related to the storage of evidence and contraband, any new technologies that are needed for enforcement and prosecutorial purposes, and any other investments that occur, due to legalization.

Appendix D NJLM Marijuana Legalization Task Force

Quality of Life Subcommittee

Recommendation 1

The Quality of Life subcommittee opposes the current efforts to legalize marijuana. Instead, the subcommittee calls for decriminalization and the expansion of the availability of medical marijuana. . It is the opinion of the majority of this subcommittee that too many unanswered questions remain and further study is needed on a number of issues, including, but not limited to:

- 1) Impact on adolescent and young adults, including on their physical health, cognitive skills, academic performance and social skills; further, how do you address unintentional exposure to minors;
- 2) Impact in contributing to other public health issues, including, but not limited to, the impact of 2nd hand smoke, cancer, cardiovascular effect, other drug interactions, gastrointestinal effects, reproductive effects?
- 3) Impact on impaired driving and other law enforcement issues.

Other public health and safety issues that should be considered

- 4) Social: How will the illegal market react?
- 5) Impaired Driving

Recommendation 2

Instead of pursuing legalization at this time, New Jersey should decriminalize certain marijuana violations and establish a policy on expungement of certain offenses.

Recommendation 3

Instead of pursuing legalization at this time, New Jersey should expand the availability of medical marijuana, including allowing for an increase in the number of medical dispensaries statewide.

The following recommendations are made in the event that New Jersey does in fact legalize recreational marijuana.

Recommendation 4

In the event that New Jersey does in fact legalize recreational marijuana, revenues should be dedicated by the State Constitution. The State of New Jersey has an unfortunate history of diverting revenues allocations established by statute, since the annual Appropriations Act overrides any statutory funding provision. Therefore, the only way to guarantee revenues will be allocated appropriately is to ask the voters of the State, by public referendum, to approve constitutional requirements.

If NJ is to legalize marijuana use, local allocation of revenues must be escalated over the percentages contemplated in existing proposals. Further, even law enforcement agencies in municipalities which “opt out” must be provided revenues to address implementation since impaired driving does not know municipal boundaries.

NJ should prioritize any state revenues associated with the legalization of recreational marijuana for addiction services and for public educational purposes, directed mostly to minors and young adults.

Recommendation 5

In the event that New Jersey does in fact legalize recreational marijuana, there should be full disclosure, transparency and a background review in order to obtain a license. This criteria should be strictly enforced and established by statute.

Recommendation 6

In the event that New Jersey does in fact legalize recreational marijuana, the State Department of Health should promulgate through regulation appropriate labeling standards as well as standards as for potency levels.

Recommendation 7

In the event that New Jersey does in fact legalize recreational marijuana, the State should promulgate through regulation appropriate price controls and ranges as a condition of a license. This is intended to mitigate efforts by the illegal market to undercut the market.

Further, before legalization is advanced, public policy makers must contemplate how current dealers will react, drug trafficking and how will the illegal market function. Appropriate resources must be included.

Appendix E NJLM Marijuana Legalization Task Force

Summary of Taxation & Revenue Sharing in Other States with Legalized Recreational Use (January 2018)

Nevada

Retail Marijuana subject to:

15% excise tax on the wholesale price; paid by the cultivator (applies to everything). This revenue is dedicated to Nevada schools, less the amount to cover the costs of the program for the State and local governments. \$5 million per annum from the proceeds is “deemed sufficient” to cover local government cost for increased demands on public services related to marijuana.

10% excise tax on the retail sale; paid by the retail store (recreational marijuana only). This revenue is dedicated to Nevada’s ‘rainy day fund’.

Retail sales tax at the local rate.

Any excise tax collected must first pay for the cost of the State and each municipality to carry out requirements of the law and regulations. Remaining funds are sent to the State Treasurer.

Municipalities are allowed to charge a business license fee up to 3% of marijuana business gross receipts.

State Department of Treasury established procedures for collection of taxes, fees, & penalties

Excise tax is based on “fair market value”, which is defined as the value established by the Department of Taxation based on the price a buyer would pay a seller in an arm’s length transaction for marijuana in the wholesale market.

Any excise tax collected must first pay the costs of the Department of Taxation and each locality to carry out the requirements of the law and regulations. Remaining fund are dedicated to the School Account in the State’s general fund.

Oregon

Permits municipalities to impose up to a 3% tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to voters at November General Election.

State sales tax is 17% on retail sale of marijuana items – including leaves, flowers, immature plants, concentrates, extracts, skin & hair products, and other products.

10% of the State sales tax is distributed to municipalities that have not adopted ordinance prohibiting the sale. The revenue is to be used to “assist local law enforcement in performing its

duties” Distribution is based on both per capita and license – 75% based on per capita and 25% based on license. Oregon found that per capita was more predictable. They also found a correlation between population & number of licenses.

From 1/1/2016 to 6/30/2017, Oregon distributed \$322,000 which equaled roughly \$0.11 per capita. Per capita was approximately \$1.35 million or \$0.56 per capita. Total license share approximately \$450,000 or \$637 per license.

The remaining 7% of the State Sales tax is broken down as follows:

- 40% to Common School Fund
- 20% to Mental Health Alcoholism & Drug Service Account
- 15% to State Police
- 10% to Municipalities
- 10% to Counties
- 5% Oregon Health Authority

Alaska

State Excise tax of \$50 per ounce, or proportionate part thereof.

No local funding provided.

Municipalities can establish a schedule of annual operating, registration, and application fees for marijuana establishments, provided the application fee shall only be due if an application is submitted to the local government. Registration fee is the same as the application fee.

California

State’s tax is 25% (15% excise & 10% on cultivation)

15% state excise tax, breakdown as follows:

- \$2 million to UC San Diego for Medical Cannabis Research
- \$3 million, for 5 years, to California Highway Patrol to establish DUI protocols
- \$10 million until 2028 to a California public university for legalization related research
- \$10 million in 2018 to areas disproportionately affected by criminalization. Grows by \$10 million per year and remains at \$50 million in 2022 +
- Remaining funds:
 - 60% - drug education, treatment & prevention for youth
 - 20% - state & local law enforcement
 - 20% - cleaning up environmental damage caused by pre-regulation growing operation

Local option to impose local tax.

Colorado

15% excise tax & 10% special state sales tax for retail marijuana.

Application fee is split with 50/50 with municipality (\$250 to \$2,500).

Local option to impose Excise & Sales tax.

15% of gross retail & medical marijuana retail tax is distributed to counties and municipalities based on relative retail sales per establishment.

Washington

Recreational marijuana is subject to a 25% tax at the point of sale for a producer and retailer; if the producer is also a retailer they are subject to a 25% tax not a 50% tax.

Application fee is \$250 for each license – renewal is \$1000.

\$6 million shared with municipalities and counties with licensed facilities.

Beginning in 2018 funds will be distributed based on a formula.

If revenue exceeds \$25 million 30% of all tax in State's general fund in the prior fiscal year will be distributed to local government as follows:

- 30% to municipalities & counties where retailers are located, based on the retail sales from stores in each jurisdiction
- 70% to municipalities & counties on a per capita basis

Local sales taxes can be levied between 0.5% to 3%.

Massachusetts

6.52% state sales tax.

10.75% excise tax.

Local option tax cap to 3% of total sale price.

Funds collected by the State and returned to the municipalities.

Marijuana operations (growers & retail) must enter into host community impact agreements to offset costs of impacted towns. Negotiated every 5 years. Condition of state license.