



# New Jersey: Racing to Adult Use Applications

September 2, 2021



## Agenda

- > **Adult-Use Regulations and Timeline**
- > Application Variables and Considerations
- > Immediate Action Items
  
- ❖ Please ask questions throughout the program using the Q&A feature

## ■ Adult-Use Timeline:

- February 22, 2021 – adult use legislation signed into law
- August 19, 2021 – interim rules and regulations adopted by CRC
- August 19, 2021 – earliest date adult use sales could begin
- **September 18, 2021 – CRC must begin accepting applications**
  - **Will they meet this? Plan for worst-case deadline.**
- October 18, 2021 – CRC must make decisions on conditional licenses
- December 17, 2021 – CRC must make decisions on annual licenses
- February 22, 2022 – latest date when adult use sales must commence

- **License types:**

- Class 1 Cannabis Grower
- Class 2 Cannabis Processor
- Class 3 Cannabis Wholesaler
- Class 4 Cannabis Distributor
- Class 5 Cannabis Retailer
- Class 6 Cannabis Delivery

- **Other License Considerations:**

- Priority Review (Social Equity, Diversely Owned, Impact Zone Businesses)
- Conditional license: 35% of all licenses issued
- Microbusiness licenses: 25% of all licenses issued
- MBE/WBE businesses: 30% of all licenses issued
- Impact Zones: 25% of all licenses

### **Social Equity Business – Applicants that Meet One of the Following Criteria:**

- More than 50% of ownership held by one or more persons that:
  - At the time the initial application is submitted, have lived in an Economically Disadvantaged Area for 5 of the 10 preceding years, AND
  - Are, at the time of the initial application is submitted and based on the preceding year's income, a member of a household that has a household income that is 80 percent or less of the average median household income in the State
- More than 50% of ownership held by one or more persons eligible to be pronounced rehabilitated in accordance with N.J.A.C. 17:30-7.12(e), if necessary, and have been adjudicated delinquent for or convicted of, whether expunged or not, in this State, another state, or federally:
  - At least two marijuana- or hashish-related disorderly persons offenses, OR
  - At least one marijuana- or hashish-related indictable offenses

## **Diversely Owned Businesses – Applicants that Meet One of the Following Criteria:**

- 51% owned and controlled
- Certified by the New Jersey Department of Treasury (4-6 week delay):
  - Minority Owned Business Enterprise
  - Women-Owned Business Enterprise
  - Disabled Veteran-Owned Business Enterprise (additional verification from the U.S. Department of Veterans Affairs as a service-disabled veteran-owned small business)

## **Impact Zone Business – Applicants that Meet One of the Following Criteria:**

- Operates a cannabis business that is located, or intended to be located, within an impact zone, OR
- More than 50% of the ownership interest is held by a current resident or residents of an impact zone who have resided there for three or more consecutive years at the time of application, OR
- Presents a plan, along with an attestation, to ensure that:
  - At least 25% of its employees reside in any of the State’s impact zones, AND
  - Among the employees who reside in an impact zone, at least 25% resident in the impact zone nearest to the cannabis business’s location or intended location
- Failure to meet the requisite percentages of employees from an impact zone within 90 days of the commencement of operations of a cannabis business may result in suspension or revocation

## Conditional License Considerations

- Missing ingredient license
- Must include one significantly involved person residing in NJ for at least 2 years
- Ownership reflecting gross income not exceeding \$200,000/\$400,000
  - Remember – “owner” is a defined term
- 30 day turnaround on application
- 120 days to solve for missing ingredient
- Thereafter converts to annual license



## Microbusiness Considerations

- 100% owned by New Jersey residents who have resided in the state for the past two years
- At least 51% of the owner, principals, AND employees (statute says OR) must be residents of the municipality where the business will be located or the neighboring municipality
- Cap on 10 employees
- Microbusiness cannabis cultivator
  - total grow area may not exceed 2,500 square feet measured on a horizontal plane, and 24 feet measured vertically above that plane
  - Can possess no more than 1,000 cannabis plants each month
- Microbusiness cannabis manufacturer – acquire no more than 1,000 pounds each month
- Microbusiness cannabis retail – acquire no more than 1,000 pounds each month
- A microbusiness holding an annual license cannot sell or transfer its license
- CAN CONVERT TO AN ANNUAL LICENSE – 1 year of operations + explanation for request
- NO CAP ON THE NUMBER OF MICROBUSINESS LICENSES

## ■ **Application Limitations**

- Applicant may only have one open and pending license application for each class of license at one time

## ■ **Licensing Limitations (24-month period beginning February 22, 2021)**

- Cultivation – owners and principals may concurrently hold with manufacturing
- Manufacturing – owners and principals may concurrently hold with cultivation
- Dispensaries – may hold one and no other
- Delivery – may hold one and no other
- Distribution- may hold one and no other
- Wholesaling – TBD

## ■ **Licensing Limitations (Beginning February 22, 2023)**

- Owners and principals may hold 1 cultivator, 1 manufacturer, retailer, and 1 delivery. If distributor, just distributor.

## ■ **Abandonment**

- If applicant wins one of the preceding thereby triggering the prohibition, applicant may abandon by providing written notice to the Commission in order to accept another license.

## ■ Majority Shares

- Majority share of a license applicant's ownership interest (and specifically those interests that qualify as a diversely owned business, social equity business, impact zone business, or microbusiness) must remain the same from the DATE OF SUBMISSION OF APPLICATION until TWO YEARS AFTER COMMENCEMENT OF OPERATIONS
  - date application submission + provisional licensure period + commencement of operations + 2 years

## ■ Passive Investor

- May be passive investor owning less than 5% beneficial interest in more than one cannabis business (no indication as to maximum number of licenses) AND does not have control or decision-making authority

## ■ Holdcos

- Presence of intermediary shell or holding company does not change the determination as to who holds the ownership interest

## ■ Financial Sources

- May provide funding to up to seven license applicants or license-holders

## ■ MSAs

- May provide management services to up to five license applicants or license-holders

## ■ Financial Source Agreements

- CRC will vet every financial source agreement for commercial reasonableness
- May not be an owner, passive investor, or principal of a cannabis business
- May grant a future or contingent right to obtain an ownership interest, provided that the financial source is otherwise qualified
- Prohibition on “unfair advantage”:
  - Receiving a percentage of net profits
  - Interest rates exceeding 20%
  - “Shelf space” guarantees exceeding 50%
  - A promise by the license applicant or license-holder not to purchase cannabis from or sell cannabis to specifically identified license holders
  - Non-compete
  - Penalties
  - Excessive control

## ■ MSAs

- The CRC will vet every MSA for commercial reasonableness
- MSAs may include either a flat fee or percentage of revenue or profits
- 5 year terms
- May not have an ownership interest
- No security interests
  - BUT – right of first refusal
- Prohibition on “unfair advantage” provisions
- Information to be submitted to the CRC prior to an MSA’s execution:
  - Copy of the MSA and related agreements
  - Information detailing any remuneration paid or to be paid to the vendor-contractor
  - Background information and related disclosures of vendor-contractor

## ■ Expanded ATCs

- Letter of intent by the ATC of what licenses are sought to convert
- Municipal approvals, inclusive of:
  - Ordinances adopted by the town governing the uses sought
  - Attestation by the ATC that it will comply with relevant restrictions for the time place and manner rules imposed by the municipality
  - Zoning approval, a resolution from the municipality, or a letter from the highest ranking municipal official that authorizes the ATC to engage in the permitted use
- Certification to the Commission that the ATC has sufficient quantities of medical cannabis and medical cannabis products available
- A certification that the ATC shall not make operational changes that reduce access to medical cannabis
- Detailed plan for prioritizing and meeting the needs of registered patients
- A list of all owners, principals, management services contractors, etc., associated with the cannabis uses
- Labor peace agreement

## ■ Expanded ATCs (contd.)

- License Cap: 37 is the number for adult-use + Expanded ATCs
- Canopy: up to 150,000 sq. ft.
- Collective Bargaining Agreement? Good faith efforts to enter within 200 days
- Medical Reserves: penalties for failing to meet reasonably anticipated needs of patients
- Outdoor cultivation – full/partial greenhouses, hoop house, other non-rigid structures, or open or cleared ground enclosed by a physical barrier
- Conversion Fees:
  - Single dispensary: \$100,000
  - Manufacturer: \$300,000
  - Cultivation: \$400,000
  - Full vertical +1 dispensary: \$800,000
  - Full vertical +2 dispensaries: \$900,000
  - Full vertical +3 dispensaries: \$1,000,000



## Agenda

- > Adult-Use Regulations and Timeline
- > **Application Variables and Considerations**
- > Immediate Action Items
  
- ❖ Please ask questions throughout the program using the Q&A feature



## ■ **Priority**

- Social Equity, Diversely Owned, and Impact Zones have primary authority
- Conditional license applicants have priority over annual license applicants
- Microbusiness applicants have priority over standard cannabis business license applicants, but do not count toward any quota

## ■ Notice

- Timing – September 18<sup>th</sup> based on statute, but can they really meet that date ?
  - Prepare for earliest possible submittal and rolling review of applications
- Types or classes of license applications being accepted
- Criteria for eligibility
  - Measures by which the applicant will be scored
    - Evaluation criteria (but not allocation is set out in statute)
  - Maximum scores for each individual measure
  - Total score required for a license applicant to be approved
    - Will approval really be first come first serve as “rolling” reference in regs indicates?
    - Will all approved applicants be placed in lottery? Or some? Or the last license?
      - Perfect score or threshold score to qualify?
    - Will lottery be by groups?
    - What does “priority” review really mean if there is a lottery?
    - Will there be a hybrid approach or differing approach among “groups”?
- Any geographic limitations
- If the number of available licenses of a certain class are capped or limited, the number of available licenses of such class

## ■ Lottery?

- “[w]here the number of applicants with the same number of points in a cannabis business license class or group is greater than the remaining number of licenses available from the Commission, the Commission may conduct a public lottery among the eligible license applicants in such class or group.”
- CRC will stop accepting applications for the license class at least 90 days prior to the lottery
- Lottery for waitlist (at least three applicants per license class)

## ■ Application

- Operating plan
- Business and financial plan
- Environmental impact plan
- Safety and security plan
- Community impact, social responsibility, and research statement
- Workforce development and job creation plan
- SOPs
- LPA
- If entry into partnership with re-entry program – name of re-entry program, employment or training opportunities, any other initiatives

## ■ Bonus Points

- Applicants that have a significantly involved person lawfully residing in New Jersey for at least 5 years
- Applicants that are a party to a collective bargaining agreement with a bona fide labor organization that currently represents, or is actively seeking to represent cannabis workers in New Jersey
- Party to a collective bargaining agreement with a bona fide labor organization that represents cannabis workers in another state
- Applicants that submit a signed project labor agreement with a bona fide building trades labor organization
- Applicants that submit a signed project labor agreement with a bona fide labor organization for any other applicable project associated with the licensed entity

## ■ Role of Municipalities

- Commission forwards a copy of the application to local municipality within 14 days
- Within 14 days thereafter, municipality **must indicate its preference** for applicants within the municipality
- Failure of municipality to respond to the Commission may result in the Commission deeming the license application in compliance with any pertinent ordinance or regulation
- Municipal government officials shall not solicit, and a cannabis business may not offer, anything of value in exchange for zoning approval, proof of local support, or written approval for such cannabis business

## ■ Form of Municipal Approval

- Letter or affidavit from appropriate officials stating that the location will conform to municipal zoning requirements for the specific use sought
- Adoption of resolution by governing body demonstrating proof of local support



## Agenda

- > Adult-Use Regulations and Timeline
  - > Application Variables and Considerations
  - > **Immediate Action Items**
- ❖ Please ask questions throughout the program using the Q&A feature

### ■ **Real Estate**

- Geographic diversity and patient access have been a cornerstone – same for AU?
- Zoning approvals/proof of local support/resolutions
- Impact zone and microbusiness considerations

### ■ **Team Building**

- In past RFAs, experience was 1/3 of the points – how do you reflect it?
- Business experience in regulated marketplaces
- Not a residency requirement – but a residency bonus

### ■ **Local Awareness**

- Community impact statement
- Workforce development and job creation plan (including impact zone hiring)
- LPA/CBA/PLA



### ■ Application Preparatory Work

- Federal and state tax ID
- Valid business registration certificate
- Information about the applicant, i.e., name, d/b/a, etc.
- Business formation documents, i.e. articles of incorporation, charter, bylaws, stock issuance records, operating agreements, etc.
- Information on proposed location, i.e., mailing and physical address, suitability of proposed location, site plan of the proposed location, including a floor plan, which may optionally include renderings, architectural plans, or engineering plans
- Evidence of compliance with local codes
- Where leased, certification form landlord acknowledging cannabis use
  - Disqualification if applicant does not have
- Plan for obtaining liability insurance coverage

### ■ Application Preparatory Work (cont.)

- Org charts
- List of all owners. Personal history disclosure forms
- Any management services agreements
- Any all events of sales, mergers, business combinations, or consolidations
- List of all financial sources
- List of all vendor-contractors
- Regulatory/litigation history
- List of all financial institutions of the applicant
- Charitable contributions by the applicant in the last 5 years
- Ownership information in other cannabis licenses
- MBE, WBE, or Disabled Veteran Certifications



QUESTIONS?



***Michael McQueeney, Counsel***

646.927.5502  
mmcqueeney@foleyhoag.com



***Jesse Alderman, Partner***

617.832.1158  
jalderman@foleyhoag.com



***Cecilia Oyediran, Associate***

212.812.0411  
coyediran@foleyhoag.com

**Be sure to check out our blog!**  
**<https://www.cannabisandthelaw.com/>**

