



New York Cannabis: A Maturing Market About to Bloom

August 4, 2022

■ **Previous New York Webinar:**

- [2021: A Foundational Year For New York Cannabis](#)

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Agenda

- > **MRTA – Where Are We Now?**

- > Broad in Discretion – Limited in Guidance

- > What Does the Application Look Like?

- ❖ Please ask questions throughout the program using the Q&A feature.

■ License types:

- Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary License.
- Registered Organization Adult-Use Cultivator, Processor, and Distributor License.
- Cultivator License.
- Processor License.
- Distributor License.
- Retail Dispensary License.
- On-site Consumption License.
- Cooperative License.
- Microbusiness License.
- Delivery License.
- Nursery License.
- Laboratory Testing License.
- Conditional Adult-Use Cultivator Licenses (“AUCC”).
- Conditional Adult-Use Processor License (“AUCP”).
- Conditional Adult-Use Retail License (“CAURD”).

■ License Restrictions:

- Vertical Integration:
 - Prohibited except for ROs and Microbusinesses.
 - Except: Cultivation + Processing + Distribution (just among own licenses)
 - Except: AUCC + AUCP + Self-Distribution Until June 30, 2023
- Cultivation + Processing - may have more than one site.
- Retail and On-Site Consumption – may have up to three sites.
 - If hold retail, cannot hold on-site, and vice versa.
- Coops – may cultivate, process, and distribute, but not dispense.



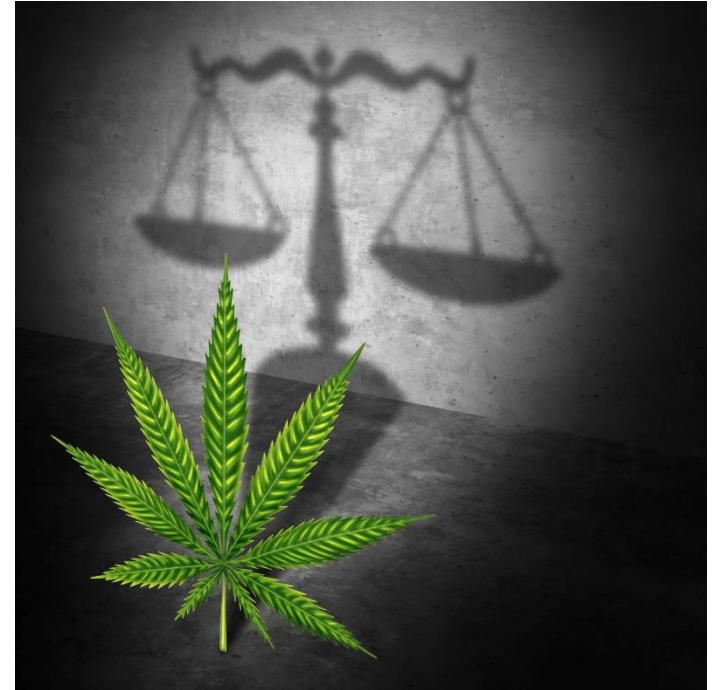
■ Municipal Oversight:

- May only affirmatively prohibit retail dispensaries and on-site consumption licenses. The deadline to opt-out was December 31, 2021.
- May not locate license within:
 - 500 feet of school grounds.
 - 200 feet of houses of worship.
- Cannot *ban* cultivators, processors, distributors, delivery, nursery, microbusinesses, cooperatives.
- Can pass reasonable time/place/manner zoning rules for these license classes.
- Notification to municipalities prior to application.
 - Between two hundred seventy (270) and thirty (30) days before application submission, retail and on-site consumption applicants must provide notice to the municipality of the intention to file such an application.
 - Municipality may take position on applicant/application (for or against).
 - Not dispositive on whether the CCB grants or denies application, but forms part of the record.

- **Social Equity Priority:** goal of 50% of all licenses.
- **But what is social equity?**
 - Social equity inclusive of minority and women-owned businesses, distressed farmers, and service-disabled veterans.
 - State to develop social and economic equity plan providing extra priority to applicants that demonstrate they are:
 - a member of a community disproportionately impacted by the enforcement of cannabis prohibition.
 - has an income lower than 80% of the median income of the county in which the applicant resides.
 - was convicted of a marihuana-related offense prior to the effective date, or had a parent, guardian, child, spouse, or dependent who was convicted of a marihuana related offense.
- **Licenses issued to social equity applicants nontransferable for three (3) year period.**
 - May be transferred to other qualified social equity applicant with approval from the CCB.

■ Timeline to Date:

- March 31, 2021 – MRTA signed into law.
- December 31, 2021 – deadline for municipal opt-out.
- February 22, 2022 – AUCC/AUCP signed into law.
- March 15, 2022 – AUCC application window opens.
- June 28, 2022 – AUCP application window opens.
- June 30, 2022 – AUCC application window closes.
- August 31, 2022 – AUCP application window closes.
- July 14, 2022 – CAURD regulations filed with the Department of State.



- Hundreds of licenses in as many days.
 - 223 Conditional Adult-Use Cultivation Licenses issued as of July 14, 2022.
 - No cap on the total number of AUCC/AUCP/CAUR licenses.
 - Application review occurring over a period of:
 - AUCC - approximately 3-8 weeks.
 - AUCP – approximately 4-8 weeks.
 - CAURD – statements by CCB Chair and OCM Executive Director anticipates 100-200 CAURD licenses.



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- AUCC and AUCP – NO PROMULGATED REGULATIONS.
 - S8084A only 7 pages.
- But, OCM has promulgated:
 - Guidance.
 - Terms and Conditions.
 - FAQs.
 - Responses to Comments to Proposed Rules.
 - Public-facing statements.
- CAURD – regulations promulgated, but restrictive in nature.



KNOW THE
RULES!

- AUCC Guidance + FAQs – Questions Answered and Open.
- Questions Answered.
 - Track and trace? No state designated software.
 - Lighting? Distinction on existing verse new.
 - Processing? Legislation provides right, OCM keeps narrow.
 - Distribution? Self-distribution through June 1, 2023.
 - Clones? AUCC can sell clones/harvested cannabis to other AUCCs.
 - Shared services? Permissible, but all growing operations are partitioned and easily identified for each license, and must be disclosed to OCM for review and approval.

- AUCC Guidance + FAQs – Questions Answered and Open.
- Open Questions.
 - AUCC to AUCC transfers taxed? If AUCC license holders act as distributors, they must register with the Department of Taxation and Finance to collect and remit the per milligram total THC tax imposed on the sale of cannabis products from a distributor to a license who sells adult-use cannabis products at retail. But, the Adult-Use Cannabis Tax Registration system at the Department of Taxation and Finance is not yet available.
 - Participation in the equity mentorship program? AUCC licenseholders must participate, but no set guidance on how this will be carried out.
 - What does it mean to hold an “interest” in more than one conditional cultivation license? OCM identifies that it “intends on issuing additional rules and regulations or guidance related to ownership limits.”
 - Limitations and restrictions related to rental, management, share services, or other agreements? OCM “intends” on issuing additional guidance.

- AUCP Guidance + FAQs – Questions Answered and Open.
- Questions Open and Answered.
 - Does AUCP license both manufacturing and extraction? Yes, it can, but the applicant is only eligible to conduct activities as AUCP that you had as hemp cannabinoid processor.
 - Note: statute says that eligibility requires that an entity must have applied for hemp cannabinoid processor license prior to January 1, 2022 to be eligible. BUT, FAQs identify that a manufacturing only hemp cannabinoid processor can theoretically add extraction if they apply for and receive a hemp cannabinoid extraction and manufacturing license.
 - Disclosure of 100% of ownership interests in entity? Yes, but FAQs identify that if the applicant is a publicly traded company where the disclosure of all ownership interests would be administratively burdensome, applicants may reach out to licensing for direction and assistance.
 - All cannabis processing must be done in conformity with Good Manufacturing Practices.

- AUCP Guidance + FAQs – Questions Answered and Open.
- Questions Answered.
 - Approved products: topicals, edibles (including beverages), vaporization cartridge or single-use pens, certain concentrates, tinctures, capsules, tablets, and any other form approved by the Office.
 - Prohibited products: those attractive to individuals under the age of 21 and those, containing liquor, wine, beer, cider, tobacco, synthetic cannabinoids,
 - 5mg of THC per serving and 100 mg of total THC per package.
 - For extraction, compliance with local directives, including:
 - Certification letter of compliance with applicable state or local fire, safety, or building codes.
 - Letter from local fire marshal attesting to compliance with applicable fire codes and/or regulations.
 - Certificate of occupancy related to extraction rooms.

- CAURD – Regulations + Guidance + Comments to Rule – Questions Answered and Open.
- Justice Involved: by regulation limited to those with “convictions” for “marihuana-related offenses.”
 - But: Q&As define “marihuana-related offense” as “[a]n arrest for an offense as described above [i.e., marijuana related offenses,] that ultimately led to a conviction for another offense, such as non-drug offense, violation, or misdemeanor, by means of a plea deal or other mechanism.”
 - Goes on to state that “[i]ndividuals who can provide evidence that they . . . Were arrested for a marihuana-related offense before March 31, 2021, **may be considered** justice involved if they were ultimately convicted of a different offense.”
 - Comments to rule: “[t]here may be marihuana-related offenses the Office deems beyond those listed in the proposed rules that it may identify and amend from time to time.”

- CAURD Guidance – Questions Answered and Open.
- Answered Questions:
 - Guidance: applicants “will be assigned” a location in one of the State’s fourteen (14) geographic regions (Bronx, Brooklyn, Capital Region, Central NY, Finger Lakes, Long Island, Manhattan, Mid-Hudson, Mohawk Valley, North Country, Queens, Richmond, Southern Tier, and Western NY.” Goes on to state that “[i]f you would like to select your own site for a retail dispensary, the CAURD license may not be the right fit for you.”
 - Application scoring: following factors weighed more heavily:
 - If the marijuana-related conviction was one the justice-involved owner with sole control themselves, or parent, legal guardian, child, spouse, or dependent.
 - If the relevant arrest occurred in an area negatively impacted by over policing and mass incarceration, or has historically low median household incomes.
 - If the qualifying business has similar characteristics to a cannabis dispensary, i.e., sale of retail goods, inventory management, a physical store, and employees.
 - Strength of business experience.



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- Applications to this point focused on disclosure.
 - AUCC and AUCP Relatively the Same.
 - Primary contact information, address, and business location
 - Description of the Applicant's business plan
 - Applicant ownership and financial disclosure information including submission of organizational structure documents, organizational charts, capitalization tables
 - Disclosures of any sources or proposed sources of capital
 - CAURD
 - More extensive ownership, financial, and personal history disclosure requirements than AUCC and AUCP.
 - True Parties of Interests & Financiers
 - Proof of New York State presence
 - Proof of Conviction
 - Proof of Qualifying Business

■ CAURD - Required Disclosures.

- Legal name of the applicant.
- Assumed or trade name of the applicant.
- Name, address, FEIN, and date of birth, where applicable, of the applicant and each **true party of interest** (TPI) of applicant.
- State, or federal government photo ID for the applicant and each true party of interest of applicant.

■ True Parties of Interest.

- Sole proprietors, partners, LLC members, LLC managers, shareholders, and their spouses;
- With control over a licensee;
- Holding an actual or future right to ownership, investment or compensation, including by stock, convertible bond, note, warrant, option, SAFE, equity swap agreements over a licensee;
- Person with a financial interest in the applicant or licensee;
 - Financial interest means any actual or future right to ownership, investment or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent or child.
- Serving in a leadership, senior, or control position, such as a member, manager, president, vice president, secretary, treasurer, officer, board member, trustee, director, or a person with equivalent title or position in a licensee, and their spouses;
- Holding a revenue sharing agreement or a right to gross profit or net profit;
- That guarantee the debts of the licensee; or
- Making up the ownership structure of each level of ownership of a licensee that has a multilevel ownership structure, and their spouses.

■ TPIs Do NOT include:

- Financial institutions
- Passive investors (holding 5% or less ownership)
- Landlords (except if there is a common ownership interest between the applicant and the entity that owns the real property). The OCM may investigate all funds associated with the landlord to determine if the landlord is a financier or in situations where a rental payment has been waived or deferred.
- Persons with option to purchase applicant so long as no money has been made under an option contract or agreement for such sale
- Hourly/flat fee consultants
- Persons with contracts to receive a commission for the sale of the business or real property
- Persons receiving a bonus or commission so long as the commission does not exceed 10% of sales in any given bonus or commission period. Commission –based compensation agreements must be in writing.

■ TPIs verse Financiers.

- **Financier** means any person, other than financial institution or government or governmental subdivision or agency, that provides capital as a gift, provides a grant, or lends capital pursuant to a secured or unsecured financing agreement.
- A financier may **not** receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a gift, grant or loan, unless the financier receives prior approval from OCM.

■ Required Disclosures (cont'd)

- Personal Information

- Personal history disclosure for applicant and each true party of interest of applicant (to be provided by OCM).
- Submission of fingerprints for applicant and each TPI. **Note:** you do not need to submit fingerprints for the initial application. The OCM will notify you when it is time to submit the fingerprints.
- Litigation History – details of any state or federal, administrative or judicial proceeding in which the applicant or any of the true parties of interest of applicant: (i) pled guilty, pled no contest, conditionally or otherwise, or were, convicted, fined, or the equivalent, or had a registration or license cancelled, suspended or revoked; or (ii) managed or served on the board of a business or nonprofit organization that pled guilty or was convicted, fined, or had a registration or license cancelled, suspended or revoked.
- Whether the applicant or any TPI: (i) has ever filed a voluntary petition or had an involuntary petition filed against it for relief under the United States Bankruptcy Code; (ii) is out of compliance with child support obligations; (iii) has been disciplined or sanctioned by a state or federal agency; or (iv) has had any state or federal tax liens against any of their property.

■ Required Disclosures (cont'd)

- Organizational and Ownership Structure

- Applicant ownership structure, including the percentage of ownership interest held by each true party of interest in the applicant, and a description of any other interest held in the applicant.
- List of all parent companies, subsidiaries, affiliates, predecessors, and successors of the applicant, including, but not limited to, all individuals of each entity at each level of ownership for the applicant that has a multilevel ownership structure.
- Current org chart of the applicant that includes position descriptions and the names and resumes of persons holding each position identified on the organizational chart.
- Organizational documents
 - Certificates of incorporation, certificates of limited partnerships, articles of organizations, charter, by-laws, partnership agreement,
 - Agreements between any two or more persons of the applicant that relate in any manner to the assets, property or profit of the applicant, or any other comparable documents that set forth the legal structure of the applicant or relate to the organization, management or control of the applicant.
- Any and all ownership changes since the formation of the applicant entity including, but not limited to:
 - Asset sales and purchases, stock sales and purchases, mergers, business combinations, or consolidations involving the applicant, including all former names of the applicant.

■ Required Disclosures (cont'd)

- Financial Disclosures

- The name of every financial institution at which the applicant and each true party of interest of applicant that has or has had a personal and business account that is or was used to financially support the business in the past 3 years.
- All sources of funding used to acquire, start or develop the business including copies of closing documents
- Audited Financial statements
 - If the applicant was formed within the year preceding the application for license, provide certified financial statements for the period of time the applicant has been in existence and any pro forma financials used for business planning purposes.
- Description of the nature, type, terms of all outstanding debt to be issued or executed in connection with operating the dispensary.
- List of any charitable contributions made by applicant in the last 5 years
- List of stocks, mutual funds, or bonds held by applicant

- Proposed and Executed Contracts

- Copies of all compensation agreements between or among applicant and each TPI, whether direct or indirect, including written description of any oral agreements, if applicable.
- Any proposed or executed contract, term sheet, agreement, or side letter between the applicant, true parties of interest of the applicant, or financier, and another party that relates to the ownership and control structure, assets, liabilities, real or intellectual property, revenue, funding or capitalization, royalties, or profit, or future profit, of the applicant or proposed licensee or comparable documents.

- Proposed and Executed Contracts (Con'td)
 - List of each financier of applicant, and copy of all financier agreements, if any.
 - Any management agreement, contract, arrangement, or other type of formal understanding between a contractor and an applicant where the contractor will or does provide administrative, operational, financial, advisory, and/or management services to an applicant in exchange for remuneration and a list of all the parties that are contained in those agreements.
 - Copy of each agreement between applicant and any person with a financial interest in the applicant.
 - List of each vendor with which the applicant has entered into a contract, term sheet, agreement, or side letter.

■ **Proof of Significant New York State Presence:**

- Proof of the individual with sole control's residency in New York State (any residency document listed above);
- Checking, savings, retirement, or brokerage statements showing assets in New York State;
- Tax filings showing assets, accounts, or property in New York State;
- Deeds, titles, mortgage documents, or homeowner warranties showing property ownership in New York State; or
- Any other proof of New York State presence as determined by OCM.

What Does the Application Process Look Like

■ Proof of Conviction:

- A Certificate of Disposition;
- A record of judgment and conviction;
- A record of plea, verdict and sentence;
- A police file that indicates the existence of a conviction;
- Health Records that indicate the existence of a conviction;
- Notarized attorneys letters that indicate the existence of a conviction;
- Acknowledgement of Application to Destroy Expunged Marihuana Conviction Record (DCJS);
- Submitted Application to Destroy Expunged Marihuana Conviction Record;
- Results from Criminal History Background Check
- Any other information verifying a marihuana-related offense as approved by OCM.



■ Documents proving where the justice involved individual lived at the time of their conviction:

- Drivers license, tax filings, lease agreements, utility bills, bank statements, letter from public housing or homeless shelter
- **Note:** Documents must have been issued before the date of the arrest or conviction and include the individual's name and residential address. If you provide documentation that was issued more than 180 days before the date of the arrest or conviction, OCM may request additional information.

■ Proof of Profitable Qualifying Business

- Tax documents
 - IRS FORM 1040, Schedule C
 - IRS FORM 1065
 - IRS FORM 1120
 - IRS FORM 1120-S
- Audited Financial Documents
- Business Account statements
- **Note:** OCM will use the documents you submit to prove your qualifying business' profitability to also prove that it is (or was) owned and controlled by a justice involved individual who will also own your dispensary if you are awarded a license. If the documents you submit don't show this individual's ownership, OCM may contact you for additional information.





QUESTIONS?



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