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Advisory Opinion 2025-01

Issued Pursuant to 9 NYCRR § 119.5

Two organizations, Brian Stark Enterprises, LLC (OCM-CAURD-24-000170) ("Stark"), and Tink & E. Co., Inc, (OCMRETL-2023-002090) ("Tink") (collectively, "Requestors") have submitted separate requests to the Cannabis Control Board ("CCB") seeking advisory opinions, pursuant to 9 NYCRR 119.5, on whether enacted and proposed code provisions in the Town of Riverhead ("Town" or "Riverhead")—specifically the zoning provisions relating to cannabis retail dispensaries and on-site consumption businesses, codified within the Town of Riverhead Code ("Town Code") §§ 301-283.20(A)(1)-(6) and (C) through (E); and a proposed Town Code § 304 that would enact a complete one-year moratorium on the Town processing any building or land use permit for cannabis businesses—are "unreasonably impracticable" and would, therefore, be subject to preemption under Cannabis Law § 131(2).

The CCB has relied solely on the facts and information Requestors provided. The CCB has not undertaken an independent investigation of the certified facts and information presented to us by Requestors. This Advisory Opinion is limited to

assessing specific Town Code provisions for compliance with Section 131(2) and does not address any other action taken by a municipality, even if that action relied upon the laws analyzed in this Advisory Opinion.

For the reasons below, the CCB finds that both the proposed Town Code § 304 and Town Code §§ 301-283.20(A)(1) - (6) and (C) through (E) are unreasonably impracticable and are subject to preemption under Cannabis Law § 131(2).

I. Factual Background

Requestors are adult-use retail dispensary licensees that are attempting to open locations in the Town of Riverhead, Suffolk County. Both Requestors have received licenses from the CCB and have complied with the required procedures in selecting their respective locations.

Riverhead is in Suffolk County, New York. In 2022, the Town passed amendments to its Town Code seeking to govern the conduct of cannabis business within its borders. The Town Code has been amended since then, most recently in July 2025. The Town also announced to the CCB in September 2025 that it is considering enacting Town Code 304, which would institute a one-year moratorium

on approving any building permits or land use applications for any cannabis business activity within Riverhead.

Both Requestors applied for a Commercial Building Permit and Use Permit from the Town of Riverhead Building Department and were rejected based on certain provisions of Town Code § 301-283.20. The Zoning Board of Appeals of the Town of Riverhead later rejected separately filed requests by each Requestor for variances from Town Code § 301-283.20.

The provisions of Town Code § 301-283.20(A)(1) through (6), which set forth zoning requirements for cannabis retail and on-site consumption establishments are as follows:

(A) Location requirements. Cannabis retail and on-site consumption establishments shall be permitted in only the Business Center; Shopping Center; Destination Retail Center; Downtown Center 1; Downtown Center 2; Downtown Center 3; Hamlet Center; Rural Corridor; Village Center; Business CR; Peconic River Community; and Business F Zoning Districts subject to the following requirements:

(1) No retail or on-site consumption establishment shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any school, library or day-care facility.

(2) No retail or on-site consumption establishment shall be established or located within 500 feet, measured from the nearest property lines of each of the affected parcels, of any Town beach, playground or community center, and children's amusement.

(3) No retail or on-site consumption establishment shall be established or located within 500 feet, measured using a straight line from the center of the nearest entrance of the place of worship to the center of the establishment, of any place of worship.

(4) No retail or on-site consumption establishment shall be established or located within 2,500 feet, measured from the nearest property lines of each of the affected parcels, of any other cannabis retail or on-site consumption establishment. Notwithstanding the above, only one cannabis retail or on-site consumption establishment shall be permitted in Commercial Corridors One, Two, Four and Five.

(5) No retail or on-site consumption establishment shall be established or located within 1,000 feet, measured from the nearest property lines of each of the affected parcels, of any existing residential use, except those properties with frontage along and located within Commercial Corridors One, Two, Three, Four and Five.

(6) No retail or on-site consumption establishment shall be established or located within a mixed-use development project containing a residential use component.

Riverhead amended Town Code § 301-283.20 on July 2025 to add new subsections 283.20(C) through 283.20(E), which sets a time limit of 90 days for which a municipal opinion issued under Cannabis Law § 76 is effective, and further require a cannabis licensee or cannabis license applicant to receive a favorable municipal opinion in order to apply for any building permit, use permit, special permit or site plan, or any other applicable land use application. These provisions appear in the Town Code as follows:

(C) Prior to applying for any building permit, use permit, special permit or site plan, or any other applicable land use application the applicant or their

representative shall cause to be filed a "Notification to Municipality" also known as OCM-06009 in the Office of the Town Clerk. Pursuant to the MRTA the Town shall have 30 days to express and opinion regarding the proposed location to the Cannabis Control Board, with the Town reserving the right to request a one-time thirty-day extension of time for generating said opinion letter. An opinion letter recommending approval with a determination that the application and its proposed site location meets and complies with Town Code (Article LIIC, Cannabis) to the Cannabis Control Board shall be valid for a period not to exceed 90 days from the date of issuance.

(D) Within 90 days of issuance of the Town's opinion letter recommending approval with a determination that the application and its proposed site location meets and complies with Town Code (Article LIIC, Cannabis) to the Cannabis Control Board, the applicant shall file or caused to be filed a copy of the cannabis license for the location set forth in the opinion letter, together with an application and submission of all requisite fees for any building permit, use permit, special permit or site plan, or any other applicable land use application required pursuant to Town Code. The applicant's failure to file the relevant land use application as described herein above within the

ninety-day period shall be deemed an abandonment of its application to locate within the Town of Riverhead and said opinion letter shall no longer be valid. In the event the applicant has complied with the filing requirements within the 90 days, then the application shall be extended for such period of time for approval or denial of such building permit, use permit, special permit or site plan or any other relevant land use application.

(E) Notwithstanding the above, upon expiration of the time parameters set forth in Subsections C and D above, the applicant may submit a new notification to municipality for the proposed location under the identical terms and conditions set forth herein

Finally, proposed Town Code § 304, a copy of which is also attached to this opinion, would set a one-year moratorium that would bar Riverhead from considering any building or other use permits for cannabis businesses. The key provision describing the moratorium is in proposed Town Code §304-3:

§304-3 Moratorium.

No new land use applications, including but not limited to: site plan applications, special permit applications, building permits, use permits, as

well as applications for use and area variances shall be accepted for Cannabis Retail Establishments or Cannabis On Site Consumption Establishments filed pursuant to Article LIIC, nor shall any pending applications continue to be processed or decided by the Town Board, the Planning Board, the Zoning Board of Appeals, the Building Department or any other agency, department, or office of the Town of Riverhead during the Moratorium Period.

Requestors[1] separately approached the Board for advisory opinions on these provisions.

II. The Cannabis Law's Preemption Provisions and Regulations

Section 131(2) of the Cannabis Law preempts municipalities "from adopting any law, rule, ordinance, regulation or prohibition pertaining to the operation or

[1] Both Requestors have brought their own lawsuits against Riverhead. In March 2025, Tink filed an Article 78 petition against the Town in Supreme Court, Suffolk County, which included a legal challenge to portions of Town Code § 301-283.20. In July 2025, a Justice of the Supreme Court found that Town Code §301-283.20(A)(4), which required a 2,500-foot buffer between cannabis dispensaries, was preempted by the Cannabis Law. That court also found that section, as well as the 1,000-foot buffer between a cannabis dispensary and a residential lot line under Town Code § 301-283.20(A)(5) were void because they violated New York Town Law § 262. See, *Tink & E. Co., et al., vs. Town of Riverhead*, et al., Index No. 606599/2025 (Hon. P. M. Hensley, J.S.C.). Stark filed its own lawsuit in July 2025, (Index No. 618489/2025), and the same Justice of the Supreme Court found on September 24, 2025, that Town Code §301-283.20(A)(1) was pre-empted and that Town Code §§ 301-283.20(A)(1), (4), and (5) were void because they violated New York Town Law § 262.

licensure of registered organizations, adult-use cannabis licenses or cannabinoid hemp licenses" unless that municipality has passed an opt-out law that complies with Cannabis Law section 131(1) prior to December 31, 2021.

There is one exception to these preemption provisions. Section 131(2) also permits local laws "governing the time, place and manner of the operation of licensed adult-use cannabis retail dispensaries and/or on-site consumption site, provided such law or regulation does not make the operation of such licensed retail dispensaries or on-site consumption sites unreasonably impracticable as determined by the board."

The Board has promulgated regulations at 9 NYCRR § 119.2(a) that list the actions that constitute the types of permissible time, place, and manner restrictions that a municipality may impose. These areas of regulation are limited to:

- Retail hours of operation;
- The visual or architectural integrity of the building if located within historical districts;
- Parking;
- Traffic control, including but not limited to pedestrian and vehicular traffic;

- Odor, pursuant to article 13-E of the Public Health Law and the Clean Indoor Air Act;
- Noise; and
- Distance requirements between a retail dispensary and a "public youth facility", provided that the distance requirement is no greater than 500 feet from the retail dispensary. (Any enacted distance buffer from public youth facility would not apply to Conditional Adult-Use Retail Dispensary licensee).

If a local law restricting the time, place and manner of operations does not fall within one of the actions enumerated in Cannabis Law § 119.2(a), then it is not a permissible time, place, and manner restriction and is, therefore, pre-empted and prohibited under the Cannabis Law Section 131(2). It also follows that if a local law attempts to regulate a cannabis license other than a retail dispensary or on-site consumption license, it is also an improper restriction that is also pre-empted by Section 131(2).

The regulations, at 9 NYCRR § 119.5, provide that the Board may review a municipal law and issue an advisory opinion as to whether the law is unreasonably impracticable upon a claim brought before the Office contesting the validity of such

local law. Section 119.5(a) provides the standard under which time, place, and manner restrictions are deemed to be unreasonably impracticable:

> "no local law, rules, or actions of the municipality shall be effective or enforceable if such action otherwise impedes on duties and obligations of the Board as set forth under the Cannabis Law, violates any provision of the Cannabis Law or this Part, or discriminates against or frustrates the registrant, licensee, or permittee's ability to carry out the operation of such registration, license, or permit as issued by the Board."

It follows that if a municipality's proposed time, place, or manner restriction does not fall within the list in section 119.2, or conflicts with provisions of the Cannabis Law or its implementing regulations, including Cannabis Law § 131, it must be deemed "unreasonably impracticable."

III. Town Code §§ 304 and 301-283.20(A)(1)-(6), and (C) through (E) Are Unreasonably Impracticable

After reviewing the text of Town Code §§ 304, and 301.283(A)(1) – (6), (C), (D), and (E) violate Cannabis Law § 131 because they are outside of the proper time place, and manner restrictions within 9 NYCRR 119.2 or contradict the provisions of the Cannabis Law, therefore making them unreasonably impracticable.

Section 301-283.20(A)(1)—which forbids the location of a dispensary within 1,000 feet of any school, library, or day care facility—doubles the minimum distance requirement of 500 feet between any school and any cannabis retail or on-site consumption business, set by Cannabis Law § 72(6), to 1,000 feet and expands that prohibition to libraries and day care facilities. Similarly, Town Code sections Town Code § 301-283.20(A)(3) -5) implement similar expansions of buffer distances from houses of worship and other dispensaries, and introduce a buffer distance from residential properties that is absent from the Cannabis Law or its regulations, Likewise, the Town Code's prohibition on dispensaries and onsite consumption establishments in a "mixed-use development containing a residential use component" under 283.20(A)(6) is another prohibition that finds no corollary in statute or regulation. Establishing or expanding required distance buffers between cannabis licenses and other businesses or organizations, or specially prohibiting cannabis businesses from areas where other businesses may lawfully operate, are

not among the enumerated time, place, and manner restrictions permitted by 9 NYCRR 119.2. Therefore, these sections of the Town Code are improper laws forbidden by Cannabis Law § 131(2) and must be deemed unreasonably impracticable under 9 NYCRR § 119.5(a).

Town Code § 301-283.20(A)(2), which establishes a 300-foot buffer from any Town beach, playground, community center, or place of children's amusement is also deemed unreasonably impracticable under 9 NYCRR § 119.5(a) for the same reasons. It should be noted that the term "community center" does not appear in the Town Code's definitions section in section 301-283.19. While the CCB's regulations at 9 NYCRR 119.2(a)(10) do permit a municipality to set a 500-foot distance buffer between a retail dispensary and a "public youth facility," that term is defined specifically in the Board's regulations at 9 NYCRR 118.1(89) as:

> "a location or structure owned by a government or government subdivision or agency, that is accessible to the public, where the primary purpose is to provide recreational opportunities or services to children or adolescents of whom the primary population is reasonably expected to be seventeen (17) years of age or younger."

In contrast, the Town Code's use of the term "community center" contains no such limitations and suggests a broader array of community gathering places that would not meet the specific definition of "public youth facility." Accordingly, Town Code § 301-283.20(A)(2) must also be deemed unreasonably impracticable.

The latest amendments, Town Code §§ 301-283.20(C), (D), and (E) are also improper. Sections § 301-283.20(C), (D) and (E) conflict with Cannabis Law § 76 by limiting the efficacy of a municipal opinion to 90 days, where the Cannabis Law contains no such time limitation. Furthermore, Section § 301-283.20(D) effectively seeks to override the CCB's ultimate authority to set the terms of licensure by requiring cannabis applicants to have received a positive municipal opinion under to apply for building and other use permits. This amendment plainly attempts to give the Town Board veto authority over applicants it disapproves of and invents a requirement that the Town must issue a positive opinion for the licensee to secure the permits necessary to open. This conflicts with Cannabis Law § 76, which treats municipal opinions as advisory and not determinative of an applicant's ability to open. This provisions also fall outside the scope of permissible municipal time, place, and manner restrictions under 9 NYCRR 119.2.

Finally, the proposed one-year moratorium on accepting any permit applications from cannabis retail or on-site consumption businesses in proposed Town Code § 304 is also improper and unreasonably impracticable. If restrictions on the ability of cannabis businesses to operate—such as increases in distance buffers from other businesses or residential areas—are unreasonably impracticable because they are not within the enumerated time, place, and manner restrictions in 9 NYCRR 119.2 or are contrary to the Cannabis Law, it follows, *A fortiori*, that a complete shut-down of the issuance of permits for any cannabis businesses is also improper.

IV. Conclusion

This Advisory Opinion Concludes that both the proposed Town Code § 304 and enacted Town Code §§ 301-283.20(A)(1) - (6) and (C) through (E) are unreasonably impracticable and are subject to preemption under Cannabis Law § 131(2).

Appendix

The following materials were considered by the CCB for this Advisory Opinion.

1. Town of Riverhead Town Code, available at: https://ecode360.com/40954820#41000073;
2. March 5, 2024, letter to the Office of Cannabis Management from Prince Lobel on behalf of "Tink & E. Co. Inc. (Re: Request For Review/ Determination Unreasonably Impracticable Standard Tink & E. Co., Inc. Proposed Dispensary at 1201 Ostrander Avenue OCMRETL-2023-002090, Non-Provisional Queue # 583);
3. June 26, 2025, letter to Cannabis Control Board from Mannat, Phelps & Phillips, LLP on behalf of Brian Stark Enterprises (Re: Brian Stark Enterprises LLC dba Metropolis Cannabis - OCM-CAURD-24-000170 -Town of Riverhead Unreasonably Impracticable Determination);
4. August 6, 2025, letter to Cannabis Control Board from Harris Beach Murtha on behalf of Brian Stark Enterprises (RE: Brian Stark Enterprises LLC dba Metropolis Cannabis - OCM-CAURD-24-000170 - Town of Riverhead Unreasonably Impracticable Determination – Update);
5. August 13, 2025, letter to Cannabis Control Board from Holland Schriever LLP on behalf of Tink & E. Co., Inc. (Re: Tink & E. Co., Inc. OCMRETL 2023-

002090 Nov. Queue No. 583 1201 Ostrander Avenue Riverhead NY Request for Unreasonably Impracticable Determination and Update); and

6. September 8, 2025, letter to Cannabis Control Board from Town of Riverhead Planning Department (Re: Consideration of Adult- Use Retail Dispensary Application for Licensure as Promoting a Public Convenience and Advantage: Large Leaf 618 LLC, OCMRETAL – 2023-001901) 840 Old Country Road, Riverhead NY (SCTM # 600-82-3-9.1)).