



# Office of Cannabis Management

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Acting Executive Director

[DATE]

## Advisory Opinion 2025-02

### Issued Pursuant to 9 NYCRR § 119.5

Two organizations, Mottz Only Authentic New York Style LLC (OCM-CAURD-22-000400) (“Mottz”), Brown Budda New York LLC, (OCM-CAURD-24-000157) (“Brown”) (collectively, “Requestors”) have submitted separate requests to the Cannabis Control Board (“CCB”) seeking advisory opinions, pursuant to 9 NYCRR 119.5, on whether enacted code provisions in the Town of Southampton (“Town” or “Southampton”)—specifically the zoning provisions relating to cannabis retail dispensaries and on-site consumption businesses, codified within the Town of Southampton Code (“Town Code”) §§ 330-23 and 330-162.26, which were enacted via Section 3 and Section 5 of Local Law 15-2023—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



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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 Section 3 and Section 5 of Local Law 15-2023, which amend Town Code § 330-33 and enact Town Code § 330-162.26 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 Southampton. Both Requestors have received licenses from the CCB and have complied with the required procedures in selecting their respective locations.

Southampton is in Suffolk County, New York. In 2023, the Town passed Local Law 15-2023, which amended Southampton’s zoning codes (Town Code Chapter 330) to govern the conduct of cannabis business within its borders. Section 3 of Local Law 15-2023 added a category called “non-medical cannabis dispensary” to the Chapter 330’s Article XVII, which is entitled “Special Exception Uses.” Adult-use retail dispensaries licensed under the Cannabis Law fall within the



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definition of “non-medical cannabis dispensary.” Under Southampton’s Town Code, business that are deemed special exception uses are subject to additional conditions set by the Southampton Planning Board (*see* Town Code §330-120), must undergo a special review process (*see* Town Code §330-121), pay a special fee (*see* Town Code §330-121(H)), and meet all special conditions before a building permit is granted (*see* Town Code §330-123).

Section 3 of Local Law 15-2023 also amended Town Code § 330-33 to limit the areas where adult-use retail dispensaries are located. That section is entitled “Business Districts Table of Use Regulations” and includes a chart which identifies the zoning districts within Southampton where certain business are permitted to operate. Under that section a “non-medical cannabis dispensary” may operate in the “Highway Business” and the “Shopping Center Business” districts, and may not operate in the “Village Business,” “Office Business,” “Motel Business,” “Resort and Waterfront Business,” “Hamlet Office/Residential,” or the “Hamlet Commercial/Residential” districts.

Section 5 of Local Law 15-2023 also enacted Town Code § 330-162.26, which sets forth all of the special conditions that an adult-use dispensary must meet to



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receive the special exception use permits for a “nonmedical cannabis dispensary.”

The provisions of Town Code § 330-162.26 are as follows

*§ 330-162.26. Nonmedical cannabis dispensary.*

*A. A nonmedical cannabis dispensary shall not be permitted on the same road and within 500 feet of school grounds. For purposes of this section, "school grounds" shall be defined as any building, structure, and surrounding outdoor grounds, including entrances or exists, contained within a public or private preschool, nursery school, elementary, or secondary school's legally defined property boundaries pursuant to § 409(2) of the New York State Education Law.*

*(1) This measurement shall be taken in a straight line from the nearest point of the school grounds to the center of the nearest entrance of the licensed premises.*

*(2) If the entrance being used for the measurement is set back from the sidewalk by a walkway or doorway, the center of the line where the walkway or doorway meets the sidewalk is used for the measurement.*



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*(3) If the school grounds are situated on a corner lot, the school ground is considered to be on both roads of the intersection, whether or not there is an entrance to the building on both roads.*

*B. A nonmedical cannabis dispensary shall not be permitted on the same road and within 500 feet of a community facility. For purposes of this section, a "community facility" shall include, but is not limited to, a facility that provides day care to children, a public park, a playground, a public swimming pool, a library, or a center or facility where the primary purpose is to provide recreational opportunities or services to children or adolescents.*

*(1) This measurement shall be taken in a straight line from the nearest point of the community facility to the center of the nearest entrance of the licensed premises.*

*(2) If the entrance being used for the measurement is set back from the sidewalk by a walkway or doorway, the center of the line where the walkway or doorway meets the sidewalk is used for the measurement.*



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*(3) If the community facility is situated on a corner lot, the facility is considered to be on both roads of the intersection, whether or not there is an entrance to the building on both roads.*

*C. A nonmedical cannabis dispensary shall not be permitted on the same road and within 200 feet of a building occupied exclusively as a house of worship.*

*(1) This measurement shall be taken in straight line from the center of the nearest entrance of such house of worship to the center of the nearest entrance of the licensed premises.*

*(2) If the entrance being used for the measurement is set back from the sidewalk by a walkway or doorway, the center of the line where the walkway or doorway meets the sidewalk is used for the measurement.*

*(3) If the house of worship is situated on a corner lot, the house of worship is considered to be on both roads of the intersection, whether or not there is an entrance to the building on both roads.*



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*(4) A house of worship does not cease to be "exclusively" occupied as a house of worship notwithstanding its incidental uses, which include, but are not limited to:*

*(a) The conduct of games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at said house of worship, or for other not-for-profit organizations or groups;*

*(b) Use of the building for fund-raising performances by, or benefitting, the not-for-profit religious organization that conducts services at said house of worship, or other not-for-profit organizations or groups;*

*(c) Use of the building by other religious organizations or groups for religious services or other purposes;*

*(d) Use of the building for social activities by, or for the benefit of, the congregants;*



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*(e) Use of the building for meetings held by organizations or groups that provide bereavement counseling, or advice or support for conditions or diseases including, but not limited to, alcoholism, substance use disorder, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease;*

*(f) Use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes, or other activities intended to promote the health of its congregants or any other persons;*

*(g) Use of the building by noncongregant members of the community for private social functions.*

*D. A nonmedical cannabis dispensary shall not be located within a 1,000-foot radius of another premises for which a nonmedical cannabis dispensary license has been issued.*

*E. The Planning Board may request a traffic impact analysis prepared by a qualified professional demonstrating that the existing*



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*roadway network in the area of the proposed dispensary will be able to safely absorb the additional traffic that the dispensary is expected to generate.*

*F. The parcel shall be of sufficient size and shape so as to provide for the required buffer and transition yard areas intended to screen the development from adjacent parcels.*

*G. If adjoining a residential parcel(s), the minimum required transitional yard shall be 100 feet.*

*H. The overall appearance and layout of the nonmedical cannabis dispensary, including both the building and the site, as well as the operation thereof, shall be designed to be in conformity with the character of the community in which it is located. Generic and standard architectural design derivatives of national or regional chains shall not be permitted. Architectural design, including the use of facade materials, roof materials, window and/or door treatments, lighting, landscaping, and signage, shall be reflective of, and harmonious with, the vernacular architecture of the particular hamlet in which the cannabis dispensary is located.*



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*I. A nonmedical cannabis dispensary site must be able to accommodate the parking requirements for retail use, as determined by the Planning Board.*

*J. Outdoor speakers, as well as outdoor music and/or public address systems, shall be prohibited.*

*K. The Planning Board may require a pedestrian circulation plan demonstrating that walkways and/or sidewalks facilitate pedestrian movement and, where applicable, connect with sidewalks and/or pedestrian walkways for uses on the same site or on adjacent sites or lots.*

*L. Drive-thru windows shall be prohibited.*

*M. Signage.*

*(1) Not more than two signs may be located outside of the nonmedical cannabis dispensary.*

*(2) Exterior signs must be on the same parcel as the store/dispensary and affixed to a building or permanent structure.*



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*(3) Exterior signs may not be larger than necessary to reasonably display the information, and must comply with the Town's Sign Code regulations at §§ 330-200 through 330-210.1, and any subsequent amendments.*

*(4) Signs shall comply with Part 129 (Adult-Use Marketing and Advertising) of the regulations promulgated by OCM, including, but not limited to, a prohibition from using or displaying colloquial references to cannabis or depictions of cannabis, cannabis products, paraphernalia, or the imagery or action of smoking or vaping.*

*(5) Signs shall not include mottos, selling messages, or any other nonessential text.*

*(6) No cannabis products shall be displayed in an area that is visible from outside the store/dispensary.*

*(7) No sign shall be within, or be readily observed within, 500 feet of school grounds or a community facility, as defined herein.*



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*N. A nonmedical cannabis dispensary shall submit evidence that all necessary licenses and/or permits have been obtained from the New York State Office of Cannabis Management (OCM) prior to the issuance of a certificate of occupancy and/or change of tenancy permit. Said licenses and/or permits shall be posted in a conspicuous place, near the main exit or exit access doorway.*

*O. A nonmedical cannabis dispensary shall have a security system to prevent and detect diversion, theft, or loss, utilizing commercial-grade equipment, pursuant to Part 125 (General Operating Requirements and Prohibitions) of the regulations promulgated by OCM.*

*P. A nonmedical cannabis dispensary shall only operate between the hours of 10:00 a.m. and 9:00 p.m.*

*Q. The Planning Board shall incorporate all applicable fire marshal requirements into any final approval.*

Mottz, which is attempting to open a retail dispensary at 93 E. Montauk Highway, Hampton Bays, New York, has received an adverse decision from



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Southampton’s Department of Land Management, which concluded that Mottz’s proposed location did not meet legal requirements, including those of Town Code § 330-162.26, Brown is attempting to open a retail dispensary and delivery business at 1533 County Rd 39, Southampton, NY 11968, and has not been able to obtain special permits under Town Code § 330-162.26.

Requestors<sup>1</sup> separately approached the Board for advisory opinions on these provisions. Between the two applications, Requestors asked the CCB to issue an advisory opinion determining that Town Code §§ 330-33 and 330-162,26(A), (B), (C), (D), (F), (G), (H), (J), (L), (M), (N), (O), and (Q) are unreasonably impracticable. Furthermore, Mottz requests the CCB to declare Section 3 and Section 5 of Local Law 15-2023—which enacted the entirety of Town Code § 330-162.26—be deemed unreasonably impracticable in their entirety.

## 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

<sup>1</sup> Both Requestors have brought their own lawsuits against Southampton, challenging the provisions of the Town Code. Brown filed its lawsuit on August 27, 2025 (Index No. 622758/2025), and Mottz filed its lawsuit on September 5, 2025 (Index No. 623638/2025). Both actions are currently pending.



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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 generally 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;



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- 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).

In addition to these limitations, 9 NYCRR § 119.1(b)(1) clarifies that Cannabis Law § 131 preempts municipalities from “adopting any local law, rule, or prohibition pertaining to the operation, registration, licensure, or permitting of [an] adult-use cannabis license[,]” including “imposing a special fee that is specific to



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cannabis businesses or the licensee that intends to operate within the jurisdiction of the municipality . . . .”

Under 9 NYCRR § 119.5, the CCB 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



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Law or its implementing regulations, including Cannabis Law § 131 and 9 NYCRR § 119.1(b)(2), it must be deemed “unreasonably impracticable.”

III. Southampton Cannot Regulate Delivery Businesses Via Town Code Chapter 330

Regardless of whether any of the challenged provisions are deemed unreasonably impracticable, Southampton improperly applied the Special Exception Use requirements enacted by Section 3 and Section 5 of Local Law 15-2023 to the ability to deliver adult-use cannabis under the Cannabis Law and its implementing regulations. Cannabis Law § 131(2) only permits municipalities to enact proper time, place, and manner restrictions against adult-use retail dispensary licensees—licensed under Cannabis Law § 72—or on-site consumption licensees—licensed under Cannabis Law § 77. Thus, the application of municipal laws to other license categories and approved activities, such as delivery, violates Cannabis Law § 131(2) and must therefore be deemed unreasonably impracticable.

IV. Section 3 of Local Law 15-2023 and Town Code §§ 330-33 Are Unreasonably Impracticable



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The CCB must find that Section 3 of Local Law 15-2023 violates Section 131(2) of the Cannabis Law and the CCB’s regulations at 9 NYCRR §§ 119.1(b)(1) and 119.2. Requiring special conditions for adult-use dispensaries to receive building permits under Town Code §§ 330-120 through 330-123, including the payment of a special application fee are outside of the proper time place, and manner restrictions within 9 NYCRR 119.2 or and directly contradict 9 NYCRR 119.1(b)(1)’s bar against special fees. Therefore, Section 3 of Local Law making them unreasonably impracticable.

In addition to finding that Section 3 of Local Law 15-2023 is unreasonably impracticable, the CCB also finds that Section 3’s amendment of Town Code § 330-33 is unreasonably impracticable because it limits the operation retail dispensaries and on-site consumption establishments—which Southampton classifies under “nonmedical cannabis dispensary”—to just two of Southampton’s eight business district zones. This limitation, which prohibits cannabis businesses from areas where other businesses may lawfully operate—liquor stores licensed by the New York State Liquor authority may operate in four Southampton business districts, for example—is not among the enumerated time, place, and manner restrictions permitted by 9 NYCRR 119.2. Therefore, these sections of the Town Code are



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improper laws forbidden by Cannabis Law § 131(2) and must be deemed unreasonably impracticable under 9 NYCRR § 119.5(a).

## V. Section 5 of Local Law 15-2023 Is Unreasonably Impracticable

The CCB’s conclusion that Section 3 of Local Law 15-2023—which required an adult-use cannabis dispensary to receive a Special Exception Use Permit—is unreasonably impracticable for violating Cannabis Law § 131 requires that the CCB also find that Section 5 of Local Law 15-2023 which enacted the special conditions to receive that permit through Town Code § 330-162.26 to be unreasonably impracticable.

Although this finding is dispositive for the purposes of this Advisory Opinion, the CCB notes that many of the restrictions in Town Code § 330-162.26 would also violate Cannabis Law § 131, even if they were not tied to an improper permitting process. Sections 330-126-26(A), (C), and (D), which require minimum distances between dispensaries and schools, houses of worship, and other cannabis licensees, must also be deemed to be unreasonably impracticable as they are not among the enumerated time, place, and manner restrictions permitted by 9 NYCRR 119.2. Distance requirements between licensees and between licensees and schools or



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houses of worship are set in statute or are under the exclusive jurisdiction of the CCB to interpret or regulate. Municipalities may not enact their own provisions interpreting the State requirements, even if such local laws have similarities with State licensure requirements. 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 § 330-126.26(B), which establishes a 500-foot buffer from any community facility is also unreasonably impracticable because it defines a “community facility” to include organizations that are beyond what is permitted in the CCB’s regulations. 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.”



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In contrast, the Town Code § 332-126.26(B) defines “community facility” to include day care facilities and libraries that would not meet the “public youth facility” definition. The Southampton community facility definition also omits the requirement of ownership by a government or a government subdivision or agency. While Town Code § 332-126.26(B) includes similarities to the CCB’s regulations, the specific deviations from 9 NYCRR §§ 118.1(89) and 119.2(a)(10) require this Southampton Town Code provision be deemed unreasonably impracticable.

Town Code §§ 330-126.26(F), (G), (H), and (L) which require certain lot characteristics for cannabis licensees; forbid “drive-thru windows” at dispensaries; and set requirements for appearance must also be deemed unreasonably impracticable because those lot requirements are not among the enumerated time, place, and manner restrictions permitted by 9 NYCRR 119.2. While a municipality may enact time, place, and manner restrictions on “the visual or architectural integrity of the building if located within historical districts” (9 NYCRR § 119.2(a)(5)), the Town Code Town Code §§ 330-126.26(H) improperly expands this category well beyond the narrow review allowed in historical districts, by including a review of the interior “layout” and “operation” of the dispensary, as well as allowing such reviews to occur anywhere within Southampton. Therefore, these



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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 §§ 330-126.26(M), (N), and (O)—which regulate signage, institute special requirements for cannabis applicants to receive a certificate of occupancy, and place security requirements on dispensaries—are also unreasonably impracticable. Not only are these special requirements outside of the permitted categories in 9 NYCRR § 119.2 but they also usurp governance matters that are under the jurisdiction of the CCB, and the Office of Cannabis Management. CCB regulations dictate signage and security requirements, as well as the placement of licenses. The Town code requirement of licensure prior to granting a certificate of occupancy also interferes with State application procedures under 9 NYCRR § 120.2. Accordingly, these provisions are barred by Cannabis Law § 131(2) and must be deemed unreasonably impracticable under 9 NYCRR § 119.5(a).

Given these findings regarding Section 5 are conclusive for the purposes of this Advisory Opinion, the CCB declines to address any remaining claims made by Requestors relating to Section 5 or Town Code § 330-162.26.

## VI. Conclusion



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This Advisory Opinion Concludes that both Sections 3 and 5 of Local Law 15-2023, 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 Southampton Town Code, Chapter 330 available at: <https://ecode360.com/8700216#8700216>
2. September 2, 2025, e-mail and attachments from Christian Killoran, Esq. on behalf of Brown Budda (“Request for Advisory Opinion”)
3. July 30, 2025, email and attachments from Vasquez P.C. on behalf of Mottz Only Authentic New York Style LLC (RE: Advisory Opinion Request Regarding Preemption of Local Law 15-2023).