



AN OVERVIEW

LOCAL LAW PREEMPTION & “UNREASONABLY IMPRACTICABLE”

LOCAL LAW PREEMPTION: MEANING & IMPACT

State preemption is a concept that comes out of the [New York State Constitution, Article IX, §2](#) and [Cannabis Law §131\(2\)](#). Preemption of a local law means that, where there is a conflict between a local law or rule and the law of New York State, or where a local law attempts to legislate where state law already has, State law will override and apply (i.e., control), not the local law.

TYPES OF CANNABIS BUSINESSES & LOCAL ACTION

If a municipality has enacted a local law prohibiting adult-use retail dispensary and/or on-site consumption license—known as “**opting-out**”—Cannabis Law §131 (2) still puts limitations on what kinds of local actions the municipality can take toward other types of cannabis businesses. A municipality that has opted-out cannot adopt any local law regarding the operation of licensed registered organizations (e.g. a medical cannabis operator), supply-side adult-use cannabis businesses (e.g. cultivator, processor, distributor), or cannabinoid hemp businesses.

If a municipality did not opt-out of allowing adult-use retail dispensaries and/or on-site consumption, Cannabis Law §131 (2) **does** permit local laws regarding the time, place, and manner of operation of adult-use retail dispensaries and on-site consumption licenses. However, the local law cannot make the operation of the licensed cannabis business “unreasonably impracticable.” Unreasonably impracticable is a determination that the Cannabis Control Board (CCB) makes. See, [9 NYCRR, §119.2](#), [§119.5](#).

HOW TO SUBMIT A ‘UNREASONABLY IMPRACTICABLE’ CLAIM

If an applicant, licensee, or other entity believes a municipality has passed a local law that makes the operation of the licensed cannabis business unreasonably impracticable, they can submit a claim to the CCB.

Similarly, if a local government wants the CCB to review a law, they may submit it using the same procedures.

An entity must provide the following criteria to initiate an unreasonably impracticable claim:

- Summarize the municipal law or code you believe is unreasonably impracticable.
- Provide a copy of the local ordinance or law you believe is unreasonably impracticable.
- Provide any applicable case law/studies and arguments regarding your claim.
- Provide claims with findings on why you believe the local ordinance or law is unreasonably impracticable.
- Provide supporting arguments and documentation on your claim.

Once all the criteria are gathered, send the documentation to the Office of Cannabis Management (OCM) at municipalities@ocm.ny.gov.

NEXT STEPS AFTER SUBMITTING AN 'UNREASONABLY IMPRACTICABLE' CLAIM

After claim submission to municipalities@ocm.ny.gov:

- OCM will review and analyze the claim and all supporting information;
- OCM will send the claim to the Cannabis Control Board (CCB) for a final determination;
- The CCB will review and deliberate on the claim. The Board will calendar the claim for discussion at a public Board meeting.
- The Board will vote on the claim at the Board meeting, issue an advisory opinion, and send notice to the claimant and municipality.

See, [9 NYCRR §119.5](#).

IF THE CANNABIS CONTROL BOARD DETERMINES THAT A LOCAL LAW IS UNREASONABLY IMPRACTICABLE

- If the municipality adopted the local law before the Board issued its advisory opinion, the advisory opinion will be presumptive evidence that the municipality has acted in violation of Cannabis Law §131 (2); and
- If the local law has been proposed, but not yet adopted, the municipality will be preempted from adopting the local law.

WHERE LOCAL GOVERNMENTS ARE PERMITTED TO ACT

The actions that constitute the permissible time, place, and manner restrictions that a municipality can impose are listed in 9 NYCRR §119.2. These are:

- 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, microbusiness, or a Registered Organization Dispensing (ROD) and a public youth facility, if, that the distance requirement is no greater than 500 feet from the retail dispensary, microbusiness, or ROD. The distance requirements for a public youth facility do not apply to Conditional Adult-Use Retail Dispensary (CAURD) licensees, see [9 NYCRR §116, et seq.](#)

If the municipal restrictions do not fall within the scope of § 119.2, they are pre-empted by the Cannabis Law and the Cannabis Control Board regulations. Municipal restrictions and requirements that are generic—not specific to businesses licensed by the Board—are not preempted.

Please reach out to municipalities@ocm.ny.gov for any further questions.