November 3, 2025

Advisory Opinion 2025-03

Issued Pursuant to 9 NYCRR § 119.5

Uncle Joe's Joint Venture, license number OCM-CAURD-22-000240 (OCMCAURD-2022-000240) ("Uncle Joe's"), BWell Holdings NY Inc., (OCMRETL-2023-001828) ("BWell"), and Augusta Properties, Inc. ("Augusta") (collectively "Requestors") have submitted requests to the Cannabis Control Board ("CCB") for an advisory opinion on whether a proposed local law that would amend the zoning provisions in Chapter 98 of the Code of the Town of Tuxedo to regulate cannabis retail dispensaries ("Proposed Law")—by limiting those businesses to a Cannabis Retail Dispensary Overlay District and imposing other operational requirements—is "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 facts and information presented to us by Requestors. This Advisory Opinion is limited to assessing the challenged 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 the challenged provisions in the Proposed Law unreasonably impracticable and subject to preemption under Cannabis Law § 131(2).

I. Factual Background

Requestors each submitted separate requests for an advisory opinion in July 2025. At that time, Uncle Joe's, a provisional CAURD licensee, was in the process of securing a lease from Augusta for a commercial property located at 192 Route 17 in Tuxedo. Additionally, BWell is a provisional adult-use retail licensee who submitted a notice to the municipality of intent to operate. The Town of Tuxedo is in Orange County, New York. Requestors sought advisory opinions after learning that the Tuxedo Town Board had a public hearing scheduled for the Proposed Law.

On July 23, 2025, attorneys for the Town of Tuxedo wrote to the Office of Cannabis Management ("Office") requesting that an advisory opinion be deferred so that the Town could hold further public hearings and consider modifications to the Proposed Law. Nothing in regulation or the Cannabis Law requires the CCB to delay its advisory opinion. As of the date of this advisory opinion, the CCB understands that the Proposed Law has not been enacted.

a. Overview of the Proposed Law

The Proposed Law sets forth a comprehensive regulatory scheme for cannabis retail dispensaries. Section 1 of the Proposed Law states that "the purpose of this local law is to regulate cannabis dispensaries to a certain overlay zoning district, implementing a special permit requirement, imposing certain time, place, and manner restrictions, and otherwise minimizing potential adverse effects of such uses."

Section 2 of the Proposed Law, which would amend Section 98-4, redefines the town's definition of "Retail Use" to exclude or differentiate cannabis retail dispensaries from other retail

uses by adding that "[c]annabis retail dispensaries shall not be considered retail uses." Notably, the existing Section 98-4 of the Code of the Town of Tuxedo defines retail use as "[a] commercial use where merchandise is sold to the general public for personal or household use or consumption, including but not limited to a florist, hardware store, pharmacy, convenience store, stationary store, bookstore, clothing store, shoe store, and jewelry store."

Section 3 of the Proposed Law would amend Section 98-5 of the Town's zoning provisions by creating a "Cannabis Retail Dispensary" (CRD) Section 7 the Proposed Law defines the overlay zone, thereby limiting cannabis dispensaries to a single tax map section, Section 205, located in the Southfields Hamlet Business district of the Town. Section 4 of the Proposed Law amends Section 98-9 of the code to set lot size requirements for businesses in the CRD, and Section 6 sets parking requirements.

Section 5 of the Proposed Law would create a new Section 98-28 of the Code entitled "Standards for cannabis retail dispensaries" which imposes further limitations on, and operational requirements for, cannabis dispensaries, including:

- A distancing requirement that a cannabis dispensary must be more than 500 feet from any school grounds, daycare, playground, library, public swimming pool, place of worship, addiction treatment center, or "a facility where the primary purpose of which is to provide recreational opportunities or services to children or adolescents" (Section 98-28(A)(1));
- A 2,000-foot buffer zone between cannabis dispensaries (Section 98-28(A)(2));

- A requirement that retail dispensaries licensed under the Cannabis Law must also apply for a special use permit with the Town (Section 98-28(B) subjecting dispensaries to potential additional conditions of operation and annual inspections for compliance with all components of Section 98-28;
- Additional property requirements, such as: required "fencing and/or other screening or security feature(s) around the perimeter of the property" at the discretion of the Tuxedo Planning Board "at the height and type established by the Planning Board (Sections 98-28(C)(8) and (9); and a 100-foot frontage on a State or County highway (Section 98-28(C)(12));
- Various operational requirements for signage (Section 98-28(D), sufficient lighting, trash disposal, limitation of odors and noise, hours of operation, visibility standards (Section 98-28(C)); and
- Various security requirements, including a mandatory 4K surveillance system Section 98-28(F)(1) secure cash storage on-site (Section 98-28(F)(3)), disclosure of delivery protocols to the local police department in advance (Section 98-28(F)(4)); and warrantless inspections by town inspectors and local police (Section 98-28(G)).

Finally, Section 8 of the Proposed Law, labeled a "Superseding Provision" asserts that Town's cannabis regulations supersede inconsistent State or local provisions under the Municipal

Home Rule Law.

b. Requestors' Challenge to Proposed Law

Requestors challenge several provisions of the Proposed Law. First, Requestors challenge the exclusion of cannabis dispensaries from other retail uses and its limitation to the CRD overlay district via Sections 2, 3 and 7 of the Proposed Law. According to Requestors, the overlay excludes large portions of commercial real estate available in Tuxedo and limits cannabis dispensaries to a small, fixed number of parcels that are not feasible for use. [1] One Requestor argued that CRD overlay might constitute "a *de facto* opt-out, inconsistent with the town's decision not to prohibit cannabis retail" [by failing to enact opt-out legislation in accordance with Cannabis Law 131].

Requestors also challenge the 2,000-foot buffer between licensed dispensaries and the 500-foot buffer between dispensaries and various community facilities (proposed Section 98-28(A)(1) and (2)), as well as the 100-foot State or County Road Frontage requirement (proposed Section 98-28(C)(12). Additionally, Requestors contest the operational requirements of armed, certified security guards (Section 98-28(F)(2)), mandatory 4K surveillance system (Section 98-28(F)(1)), secure cash storage on-site (Section 98-28(F)(3)), advance disclosure of delivery protocols to the local police department (Section 98-28(F)(4)); and warrantless inspections by local police (Section

[1] According to Augusta, of the 30 parcels that comprise the CRD, only 3 available for purchase or lease. One is a 10,000 sq foot warehouse unfit for a retail establishment, listed for $1.5 million. Another, offered for $2 million, was built in 1931 and is dilapidated, and the third is on barren land. The remaining parcels include a cemetery; developed parcels with active businesses that serve essential community functions, making them unlikely candidates for cannabis retail; parcels that fail square footage requirements of the CRD; 8 residential parcels that are unfeasible without evictions, rezoning, or expensive property conversions; and several parcels with limited public information.

98-28(G)).

Also contested by Requestors are the requirements for a special use permit and annual inspections by the Town building inspector (Section 98-28(B)), as well as the Superseding Provision in Section 8.

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 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 dispensary 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 the retail dispensary, microbusiness, or a Registered Organization Dispensing (ROD) and a public youth facility, provided 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 shall not apply to Conditional Adult-Use Retail Dispensary (CAURD) licensees, as outlined in 9 NYCRR §116*, et seq.*)

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 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 Law or its implementing regulations, including Cannabis Law § 131 and 9 NYCRR § 119.1(b)(2), it must be

deemed "unreasonably impracticable."

III. Town of Tuxedo Proposed Law Sections 2, 3 and 7 Are Unreasonably Impracticable

The CCB agrees with Requestors that Proposed Law Sections 2, 3, and 7, which would amend Code Sections 98-4 and 98-5, and which defines the CRD overlay district, are unreasonably impracticable and would be preempted. The amendments to Sections 98-4 and 98-5 remove retail dispensaries from the definition of "retail uses" and creates a separate Cannabis Overlay District. These provisions create a distinction between cannabis retail dispensaries and other retail businesses by severely limiting where cannabis dispensaries can be located within Tuxedo. Additionally, the cannabis dispensaries under the Proposed Law would be in a small remote area away from large areas of commerce and, due to proximity requirements of the Proposed Law, would be vastly limited in number.

These limitations, which prohibit 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, Proposed Law Sections 2, 3 and 7 are improper laws forbidden by Cannabis Law § 131(2) and must be deemed unreasonably impracticable under 9 NYCRR § 119.5(a).

IV. Town of Tuxedo Special Permit Requirements Are Unreasonably Impracticable

The CCB finds that Section 98-28(B) within the Proposed Law—which requires

dispensaries to obtain special permits and be subject to annual inspections by the Town building inspector—violates Section 131(2) of the Cannabis Law and the CCB's regulations at 9 NYCRR § 119.2. Requiring special conditions for adult-use dispensaries to receive building permits are outside of the proper time place, and manner restrictions within 9 NYCRR 119.2. Therefore, Section 98-28(B) is unreasonably impracticable.unreasonably impracticable.

V. The Proposed Law's Distance Buffers from Dispensaries and Schools are Unreasonably Impracticable

Similarly, the proximity restrictions that require a dispensary to be 500 feet from schools playgrounds, daycares, libraries, public swimming pools, places of worship, certain treatment facilities, and various youth facilities under Section 98-28(A)(1); and the proposed 2,000-foot distance buffer between dispensaries under Section 98-28(A)(2) must also been deemed 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 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 or impose distance minimums from other types of facilities, even if such local laws have similarities with State licensure requirements.

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 proposed Section 98-28(A)(1) attempts to improperly expand this category by removing requirement that the facility be publicly owned and primarily serve individuals 17 or younger. The Tuxedo definition is too broad and includes private facilities and services and facilities that do not have a primary purpose of providing recreational services to minors.

Therefore, these sections of the Proposed Law are improper laws forbidden by Cannabis Law § 131(2) and must be deemed unreasonably impracticable under 9 NYCRR § 119.5(a).

VI. Town of Tuxedo Cannot Regulate the Manner of Operation of Cannabis Businesses

The challenged provisions of the Proposed Law that attempt to regulate the operation of cannabis dispensaries are also improper. The requirements of 100-foot State or County Road Frontage requirement in section (Section 98-28(C)(12)), armed, certified security guards (Section 98-28(F)(2)), mandatory 4K surveillance systems with 30-day retention of recordings (Section 98-28(F)(1)), secure cash storage (Section 98-28(F)(3)), advance disclosure of delivery protocols to the local police department (Section 98-28(F)(4)), and warrantless inspections by local police (Section 98-28(G)) 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).

VII. Proposed Law Superseding Provision Is Ineffective Against Cannabis Law's Preemption Provisions.

The "Superseding Provision" (Section 8), which claims the Proposed Law supersedes inconsistent S**tate laws**, does not override the express preemption provisions of **Cannabis Law §131(2) or** its implementing regulations. **Municipal Home Rule** does not apply here because the Proposed Law "imposes an additional layer of regulation in an area where the Legislature has evidenced its intent to preempt the field of regulation" as it has done with the Cannabis Law, a general law applicable statewide. *Consol. Edison Co. of New York, Inc. v Town of Red Hook*, 60 NY2d 99, 104-05 [1983] (holding mod by *Police Benevolent Assn. of City of New York, Inc. v City of New York*, 40 NY3d 417 [2023]).

VI. Conclusion

This Advisory Opinion concludes that the following sections of the Proposed Law are unreasonably impracticable and are subject to preemption under Cannabis Law § 131(2):

- Sections 2, 3, 7, and 8 of the Proposed Law
- The following provisions in Section 5 of the Proposed Law

- Sections 98-28(A)(1) and (2)
- Section 98-28(C)(12)
- Section 98-28(F)(2)
- Section 98-28(F)(1)
- Section 98-28(F)(3)
- Section 98-28(F)(4)
- Section 98-28(G)
- Section 98-28(B)

The CCB expresses no opinion on the remaining provisions of the Proposed Law.

Appendix

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

1. Town of Tuxedo Introductory Local Law, Chapter 98 available at:

   https://www.tuxedogov.org/town-board/pages/proposed-local-laws-0

2. Town of Tuxedo Chapter 98, Article II available at:

   https://ecode360.com/39156721#39156721

3. June 30, 2025, email from Kerrie Larson from Tenax Strategies on behalf of BWell Inc ("Re: Notice of Unreasonably Impracticable Local Law – Proposed Cannabis Retail

Dispensary Overlay District in the Town of Tuxedo, NY")

4. July 1, 2025, email and attachments from Richard Engel, Esq. on behalf of Uncle Joe's Joint Venture ("Unreasonably Impracticable Proposed Local Law in Town of Tuxedo")
5. July 2, 2025, email and attachments from Ken Seligson from Seligson Law on behalf of Augusta Properties, Inc., ("Submission of Claim – Unreasonably Impracticable Local Cannabis Law (Town of Tuxedo)")
6. July 10, 2025, email and attachments from Kerrie Larson from Tenax Strategies on behalf of BWell Inc ("Re: Notice of Unreasonably Impracticable Local Law – Proposed Cannabis Retail Dispensary Overlay District in the Town of Tuxedo, NY")