CANNABIS VS. TOBACCO SALES REGULATION

in New York State

New York State's statutory frameworks for adult-use cannabis and commercial tobacco[1] retail regulation illustrate parallel but independent and unique systems of public health governance. Historically, tobacco control emerged through incremental regulation of an existing legal market, emphasizing taxation, youth access restrictions, protection from secondhand smoke in public places, and mechanisms designed to decrease demand for legal products (e.g., price controls and zoning restrictions).

Cannabis laws may aim to foster the growth of the cannabis industry, general state revenue, protect public health, prevent youth access, and redress social and racial inequities produced by prior criminalization.[2]

Divergent legal structures have emerged from these distinct legal and cultural histories, with little overlap between the two in New York State in part because licensed adult-use cannabis dispensaries are prohibited from selling products containing nicotine.[3] Nevertheless, there are potential intersections between cannabis and tobacco product sales laws, both with respect to particular products (e.g., vapor products) and due to shared concerns about product use. For example, in both contexts, communities and public health experts may employ similar strategies to minimize youth access and exposure, decrease youth initiation, and mitigate normalization of use.

This resource examines New York state's regulation of adult-use cannabis and tobacco product retail sales across separate, minimally intersecting systems of state and local law. It begins with an overview of the legal and historical context for tobacco and cannabis product sales regulation. It briefly discusses the primary state laws and local authority relevant to tobacco product sales regulation and then examines state laws regulating adult-use cannabis product retail sales. Finally, it describes the few ways in which these distinct legal structures overlap with one another in New York State, highlighting emerging issues and key considerations for local governments.

Legal and Historical Context

The regulatory frameworks for tobacco and adult-use cannabis product regulation differ in substantial ways, in part because they emerged from distinct historical timelines and trajectories. Namely, tobacco products have always been legal in the U.S.,[4] notwithstanding their inherently harmful nature and lack of redeeming value, while cannabis has been illegal for most of our recent history, with criminal enforcement "disproportionately impact[ing] African-American and Latinx communities."[5]

Tobacco product sales were inconsistently and disparately regulated in the U.S. throughout the country's early history, mostly relating to economic and taxation concerns, but eventually including prohibitions on sales to minors.[6] Public health concerns weighed more prominently in the 1950s and 60s, when the U.S. Surgeon General officially recognized that smoking causes lung cancer[7] and Congress enacted legislation requiring cigarette companies to add health warnings to cigarette packages.[8] It wasn't until 2009 that Congress finally enacted the federal Family Smoking Prevention and Tobacco Control Act, which regulates certain aspects of tobacco product manufacturing, marketing, and sales and authorizes the federal Food and Drug Administration (FDA) to further regulate tobacco products to protect the public's health.[9]

Cannabis, on the other hand, has been illegal at the federal level for decades. In 1970, marijuana was classified as a Schedule I substance as part of the Controlled Substances Act, meaning that it was deemed to have high potential for abuse and no accepted medical use, and resulting in federal criminal penalties for its manufacture, distribution, and possession.[10] Since then, states have led the way in decriminalizing cannabis possession (beginning in the 1970s[11]), legalizing medical cannabis use (starting with California in 1996[12]), and ultimately legalizing adult recreational cannabis use (starting with Colorado and Washington in 2012[13]). Today, 24 states, two territories, and Washington, D.C. have legalized adult use cannabis,[14] even though it remains a Schedule I substance at the federal level.[15]

New York State legalized medical marijuana in 2014[16] and implemented its medical cannabis program in 2016.[17] In 2021, the state legislature enacted the Marijuana Regulation and Taxation Act, legalizing adult-use cannabis in the state as well.[18] The law combines regulation and taxation with redress, seeking not only to control the production, sale, and taxation of cannabis, but also to repair the social and economic harms produced by past inequitable enforcement of criminal laws.[19]

Given these dissimilar historical contexts, the current legal landscape governing tobacco products looks very different from that governing adult-use cannabis products. For one thing, while tobacco products are now subject to fairly robust federal regulation — including laws governing product standards[20] — cannabis is largely unregulated at the federal level because it remains a Schedule I substance.[21] In the absence of federal regulation, detailed, comprehensive state legal frameworks are essential; ideally, state law must regulate adult-use cannabis products at every stage from cultivation to manufacturing to labeling to retail sales.[22] In contrast, state tobacco regulation is more limited, focusing on the broad range of legal topics not preempted by the Tobacco Control Act, such as taxation, smoke-free laws, and preventing youth access.[23]

The goals for these regulatory regimes also differ substantially. Namely, state, Tribal, and local tobacco product sales restrictions are increasingly aimed at ending the sale of all tobacco products,[24] while cannabis product sales restrictions tend to focus on efficiently and safely introducing cannabis products into a rapidly growing legal market.[25] These nearly opposite goals can mean that state regulatory agencies responsible for regulating the products have very different mandates, with cannabis regulatory agencies focused on fostering industry growth while tobacco regulatory agencies may focus on preventing youth access or simply collecting taxes. These disparate goals may produce differing incentives and concerns for industry players as well as dissimilar approaches to local authority and preemption. Against this complex backdrop, this resource examines relevant New York State laws and local authority to regulate retail sales of each product.

New York State Tobacco Product Retail Sale Regulation

Tobacco product retail sales are regulated by New York State both from a taxation and a public health perspective. In addition to state level regulation, many local governments regulate tobacco product retail sales as well. This section summarizes the primary state laws regulating tobacco product retail sales and describes relevant local authority.

Cigarette and Tobacco Products Tax Law

The Cigarette and Tobacco Products Tax Law, located at N.Y. Tax Law § 470 et seq., taxes the sale and use of cigarettes[26] and tobacco products[27] across the state.[28] The Department of Taxation and Finance requires registration for cigarette and tobacco product retailers[29] and vending machine operators.[30] Retailers are prohibited from possessing or selling cigarettes and tobacco products without proper registration.[31] A retailer's registration can be suspended or

revoked based on violations of the Adolescent Tobacco Use Prevention Act, discussed further below, in addition to tax-related violations.[32]

In addition to retailers, the Department licenses agents to sell cigarette tax stamps;[33] appoints tobacco product distributors to facilitate payment of tobacco product taxes;[34] and licenses wholesale dealers of both cigarettes and tobacco products.[35]

Vapor Products Tax Law

Every retail dealer of vapor products[36] must also register with the Department of Taxation and Finance prior to doing business.[37] The definition of "vapor product" encompasses both cannabis and nicotine vapor products.[38] As discussed further below, this law appears to be one of the only points of overlap between New York State tobacco and cannabis product retail sales laws.

A vapor products dealer registration may not be issued and shall be canceled or suspended if directed by an Adolescent Tobacco Use Prevention Act enforcement officer.[39] Penalties may also apply based on tax-related violations.[40]

Adolescent Tobacco Use Prevention Act

The Adolescent Tobacco Use Prevention Act, also known as ATUPA, establishes sales restrictions generally applicable to the sale of cigarettes and tobacco products.[41] The law also applies to the sale of vapor products, but its provisions are generally limited to vapor products "intended or reasonably expected to be used with or for the consumption of nicotine."[42] A key component of the law is that it prohibits tobacco product retailers from selling a range of tobacco-related products and smoking paraphernalia to individuals under 21 years old.[43]

The law also includes a range of sales restrictions designed to minimize youth tobacco exposure and use. For example, the law restricts the distribution of free products,[44] limits tobacco product advertising near schools,[45] establishes minimum package sizes for tobacco products,[46] restricts the sale of certain types of tobacco products,[47] and prohibits the sale of flavored vapor products used for consumption of nicotine.[48] Additionally, the law directs the state Health Commissioner to develop a comprehensive enforcement program to reduce use of tobacco and nicotine-containing vapor products, especially among individuals under 21 years old, including through compliance checks.[49]

Local Authority for Tobacco Product Sales Regulation

Local governments in New York State have broad authority to legislate to protect the safety and health of their residents, including through business licensing.[50] Furthermore, neither federal

nor state law preempts local authority to license and regulate tobacco retailers.[51] This means that New York State local governments are generally empowered to enact local tobacco retailer licensing laws as well as a range of tobacco product sales restrictions. Indeed, many local governments have enacted local laws for this purpose.[52]

New York State Cannabis Product Sales Regulation

New York State's Cannabis Law establishes three primary regulatory schemes: adult-use cannabis,[53] medical cannabis,[54] and cannabinoid hemp and hemp extract.[55] Each framework operates under the authority of the Cannabis Control Board (CCB)[56] and is administered by the Office of Cannabis Management (OCM);[57] however, the regulatory schemes serve different statutory goals and maintain separate licensing and compliance structures.

With respect to adult-use cannabis in particular, the Cannabis Law regulates cultivation, processing, distribution, delivery, and dispensation.[58] It establishes distinct license types depending on the activity involved, and it authorizes the Cannabis Control Board to regulate advertising, marketing, packaging, and labeling practices.[59] The law also establishes channels for municipalities to influence local cannabis retail sales but specifically prohibits local licensure requirements.[60] State law also taxes adult-use cannabis products[61] and vapor products[62] and penalizes the sale of illicit (i.e., untaxed) cannabis.[63]

This section summarizes the Cannabis Law's provisions regulating adult-use cannabis retail dispensaries, discusses relevant state tax laws, and outlines local authority relative to adult-use cannabis retail sales. Although the Cannabis Law establishes additional consumer-facing license types, such as delivery, on-site consumption, and microbusiness licenses, this resource is focused primarily on adult-use retail dispensary licensees.

Cannabis Law: Adult-use Cannabis Retail Dispensary License

The Cannabis Law authorizes adult-use cannabis retail dispensary license holders to acquire, possess, sell, and deliver cannabis to consumers from the licensed premises.[64] The law specifies that cannabis products may not be sold without the appropriate state license; any person who sells cannabis without a valid license may be subject to a range of enforcement actions and penalties.[65] A licensed dispensary may provide a delivery service,[66] operate a limited retail consumption facility,[67] or host events[68] in compliance with state requirements.

In determining whether to issue any adult-use cannabis license, the Cannabis Control Board must consider a range of factors, including whether the applicant is able to prevent illegal

diversion of cannabis products and whether the applicant will contribute to social and economic equity goals.[69] In addition, the Board must consider whether the public interest weighs in favor of granting a particular license, accounting for factors such as the number and types of other cannabis businesses operating nearby and how the applicant's proposed business may affect traffic and noise levels.[70]

The Cannabis Law and accompanying regulations set forth numerous restrictions applicable to licensed dispensaries. For example, the law restricts the location of retail dispensaries near schools and houses of worship,[71] as well as other licensees.[72] Licensed retail dispensaries must be located within a physical store "in premises which may be occupied, operated or conducted for business, trade or industry" and must have a main entrance that is at street level on a public road.[73] Retail dispensaries are prohibited from using certain terms in their business name (e.g., drugs, pharmacy); displaying cannabis products or paraphernalia in a manner easily visible to the public; dispensing cannabis products through a vending machine; providing cannabis samples to customers; or engaging in unlicensed activities (e.g., cannabis processing).[74] Dispensaries must provide certain educational information to customers.[75] Employment restrictions also apply: no one under 18 may be employed in a dispensary, and employees under 21 may not interact directly with customers.[76]

Licensed adult-use cannabis retail dispensaries are also restricted in the products they may legally sell and to whom. For example, they may not sell unauthorized types or forms of cannabis products,[77] nor may they sell cannabis products obtained from unlicensed businesses.[78] They may not sell "any cannabis product, cannabis paraphernalia, or cannabis merchandise" to individuals under 21 years old,[79] nor may they sell cannabis products in excessive quantities (e.g., quantities that exceed legal possession limits or otherwise pose

a risk to the public)[80] or to visibly intoxicated persons.[81] Dispensaries are prohibited from selling alcohol, nicotine products, or non-cannabis food, beverage, or personal care products to cannabis consumers.[82] However, in addition to selling cannabis products, retail dispensaries may sell cannabinoid hemp products if properly licensed to do so,[83] as well as cannabis paraphernalia.[84]

Licensees are held strictly accountable for any violations that occur on licensed premises or by employees acting under their authority.[85] They are also responsible for ensuring that products they possess and sell are labeled and packaged in accordance with state law.[86] A dispensary may be immediately "sealed" if it poses "an imminent threat to public health, safety, and welfare," such as based upon sales to minors or unlawful proximity to "schools, houses of worship, or public youth facilities."[87]

Tax on Adult-Use Cannabis Products

State law imposes a tax on the sale of adult-use cannabis products.[88] To facilitate tax collection, adult-use cannabis distributors and retailers must register with the New York Department of Taxation and Finance prior to doing business.[89] A retailer must be properly licensed by the Office of Cannabis Management in order to register with the Department of Taxation and Finance.[90] A failure to register may subject retailers to monetary penalties as well as forfeiture of adult-use cannabis products in their possession.[91] In addition, a retailer's registration may be revoked if the retailer does not have a valid license from the Office of Cannabis Management, if the retailer possesses or sell illicit cannabis, or if the retailer violates tax law.[92]

Vapor Products Tax Law

As previously discussed, every retail dealer of vapor products — including vapor products containing cannabis[93] — must register with the Department of Taxation and Finance prior to doing business.[94] Although a vapor products dealer registration may not be issued and will be canceled or suspended if directed by an ATUPA enforcement officer,[95] ATUPA violations seem less likely to occur in the cannabis retailer context because ATUPA primarily applies to the sale of vapor products intended for use with nicotine.[96] However, penalties may apply based on tax-related violations.[97]

As discussed below, this law appears to be one of the only points of overlap between New York State tobacco and cannabis product retail sales laws.

Local Authority for Adult-Use Cannabis Retail Sales Regulation

State law bars counties, cities, towns, and villages from creating their own local cannabis licensing, registration, or permitting systems from regulating the operations of a licensed cannabis business.[98] However, local governments have limited opportunities to influence the local adult-use cannabis retail environment.

First, until December 31, 2021, towns, cities, and villages could choose to opt-out of allowing adult-use cannabis retail dispensaries and on-site consumption sites within their jurisdiction.[99] According to the Rockefeller Institute of Government, 750 out of 1,520 municipalities opted out of allowing dispensaries within their communities, while 876 municipalities opted out of allowing consumption sites.[100] Local laws repealing opt-out decisions may be enacted at any time.[101]

Second, applicants for an adult-use retail dispensary license must notify the village, town, or city in which they are located at least 30 days and no more than 270 days before filing a licensure application with the Cannabis Control Board.[102] The municipality may then submit an opinion for the Board's consideration.[103] The Board must consider the municipality's opinion as part of the license application record and must explain to the municipality in writing how its opinion was considered.[104]

Third, towns, cities, and villages may adopt local time, place, and manner restrictions applicable to licensed adult-use cannabis retail dispensaries (as well as on-site consumption sites) as long as the restrictions do not render business operations "unreasonably impracticable."[105] State regulations establish a list of "the permissible time, place, and manner restrictions that may be imposed by a municipality":

- Hours of operation, within the bounds of the regulation;[106]
- Visual or architectural integrity of buildings in historical districts;[107]
- Parking;[108]
- Traffic control (including pedestrian and vehicular);[109]
- Odor (applicable to on-site consumption sites, except as preempted by 9 NYCRR 119.1(b));[110]
- Noise;[111]
- Distance between a retail dispensary (and other consumer-facing license types as specified) and a public youth facility. If such a local law is enacted, the distance requirement must be 500 feet.[112]

The phrasing of this regulation suggests that the list is comprehensive, meaning that municipalities may not adopt time, place, and manner restrictions outside the list. At least one lower court has stated as such, concluding that a municipality's regulatory authority relative to state-licensed cannabis businesses is expressly preempted except for the specific items set forth above.[113]

Finally, it is worth noting that the state cannabis law includes revenue distribution requirements, ensuring that local governments obtain a percentage of the tax revenue associated with cannabis sales in their jurisdiction.[114] Furthermore, adult-use cannabis licensees must comply with generally applicable local building, fire, health, and safety codes.[115]

Intersection Between Tobacco and Adult-Use Cannabis Retail Sales Regulation

There are few opportunities for lawful overlap between New York State licensed tobacco retailers and adult-use cannabis retail dispensaries, largely because cannabis retail dispensaries are prohibited from selling any product that contains nicotine. Likewise, there is little overlap between the applicable regulatory schemes. However, there are a few overlapping issues worth noting.

First, as noted previously, the Vapor Products Tax Law applies regardless of whether a vapor product contains nicotine. Accordingly, the law's registration requirement and the vapor product tax apply to both tobacco retailers and adult-use cannabis dispensaries if they sell vapor products.

Second, an emerging issue relates to regulation of nicotine analog products. Nicotine analog products are not currently regulated under federal or state law, though they may be regulated under local laws.[116] Even though nicotine analog products do not contain nicotine, the Office of Cannabis Management may conclude that adult-use cannabis retail dispensaries are nevertheless barred from selling nicotine analog products because they fall within the category of "non-cannabis food, beverage, or personal care products" that dispensaries are prohibited from selling.[117]

Finally, local governments who enact tobacco retailer licensing laws must take care to avoid inadvertent regulation of cannabis dispensaries because, as noted previously, state law preempts local permitting or licensing of adult-use cannabis dispensaries.[118] The most likely possibility for accidental overlap arises if tobacco products are defined broadly enough to include all vapor products (including cannabis vapor products) or all smoking paraphernalia

(including cannabis smoking paraphernalia). Local governments may wish to review the Public Health Law Center's model tobacco retailer licensing ordinance for sample language, including both a broad definition of "tobacco product"[119] and suggestions for explicitly excluding cannabis licensees from the law's application.[120]

Additional Resources

To learn about the intersections between NYS tobacco and cannabis smoke-free laws, see our publication, Smoking & Vaping Cannabis in New York State: Policy Options for Public Places and Multiunit Housing (forthcoming 2025).

To learn more about New York State tobacco product retailer licensing, review the following Public Health Law Center resources:

- *Comprehensive Tobacco Retailer Licensing Model Ordinance*
- *Tobacco Retailer License Model Policy—Guide & Checklist for New York State*
- *Local Retail Environment Policies in New York State*

Contact us for assistance! If you're working on New York State commercial tobacco control issues and need assistance, contact the Public Health Law Center at (651) 290-7506 or phlc.nys@mitchellhamline.edu.

This resource was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health, and was made possible through a contract with the New York State Department of Health. The Center does not provide legal representation or advice. The information in these materials should not be considered legal advice.

Endnotes

1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit resulting in disease and death. For more information visit: http://www.keepitsacred.itcmi.org. When the word "tobacco" is used throughout this document a commercial context is implied and intended.

2 *See, e.g.*, N.Y. CANNABIS LAW § 2.

3 9 NYCRR 123.10(g)(11)(v).

4 *See* National Commission on Marihuana and Drug Abuse, *History of Tobacco Regulation, in* THE REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE—MARIHUANA: A SIGNAL OF MISUNDERSTANDING (1972), https://www.druglibrary.org/schaffer/library/studies/nc/nc2b_1.htm.

5 N.Y. CANNABIS LAW § 2.

6 National Commission on Marihuana and Drug Abuse, *History of Tobacco Regulation, supra* note 4.

7 *The 1964 Report on Smoking and Health*, Nat'l Library of Med: Profiles in Science, https://profiles.nlm.nih.gov/spotlight/nn/feature/smoking.

8 Cigarette Labeling and Advertising Act, Pub. L. 89-92, 79 Stat. 282 (1965), codified at 15 U.S.C. § 1331 et seq., as amended.

9 Family Smoking Prevention and Tobacco Control Act, Pub. L. 111-31, 123 Stat. 1776 (2009), as amended. *See also* Public Health Law Center, *Federal Tobacco Regulation: An Introduction* (2021), https://www.publichealthlawcenter.org/sites/default/files/resources/Federal-Tobacco-Regulation-Introduction.pdf.

10 Controlled Substances Act, enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91-513, §§ 202, 401, 404, 84 Stat. 1236 (1970), codified at 21 U.S.C. §§ 812, 841, 844. *See also* About Cannabis Policy, Alcohol Policy Information System (last visited Nov. 14, 2025), https://alcoholpolicy.niaaa.nih.gov/about/about-cannabis-policy; LISA N. SACCO ET AL., CONGRESSIONAL RESEARCH SERVICE, THE EVOLUTION OF MARIJUANA AS A CONTROLLED SUBSTANCE AND THE FEDERAL-STATE POLICY GAP 3-6 (2022), https://www.congress.gov/crs-product/R44782.

11 *See* About Cannabis Policy, Alcohol Policy Information System, *supra* note 10.

12 *See* SACCO ET AL., CONGRESSIONAL RESEARCH SERVICE, THE EVOLUTION OF MARIJUANA AS A CONTROLLED SUBSTANCE AND THE FEDERAL-STATE POLICY, *supra* note 10 at 11.

13 *Id*. at 13.

14 Kate Bryan, Nat'l Conf. State Legislatures, Cannabis Overview (June 20, 2024), https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview.

15 21 U.S.C. 812(c).

16 2014 McKinney's Session Law News of N.Y. Ch. 90 (July 5, 2014).

17 Cannabis, N.Y.S. Dep't Health, https://www.health.ny.gov/community/cannabis.

18 Marihuana Regulation and Taxation Act, 2021 McKinney's Session Law News of N.Y. Ch. 92 (March 31, 2021).

19 N.Y. CANNABIS LAW § 2.

20 *See, e.g.*, 21 U.S.C. § 387b (Adulterated tobacco products), c (Misbranded tobacco products), g (Tobacco product standards).

21 21 U.S.C. 812(c). However, note that unique issues arise relating to hemp-derived products, which were federally legalized via the 2018 Farm Bill, Pub. L. 115-334, Subtitle G, 132 Stat. 4490 (2018), codified at 7 U.S.C. 1639o et seq., but have not been comprehensively regulated by the FDA. *See* Mat Swinburne, *Regulated Cannabis Has a Hemp Problem*, Network for Pub. Health L. (2024), https://www.networkforphl.org/news-insights/regulated-cannabis-has-a-hemp-problem. The term "hemp" was redefined to narrow the range of federally legal products 't the November 12, 2025, federal appropriations bill. *See* Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. 119-37, ___ Stat. ___ (2025).

22 National Academies of Science, Engineering, and Medicine, *Overview of Cannabis Policy*, in CANNABIS POLICY IMPACTS PUBLIC HEALTH AND HEALTH EQUITY (EB Boyle, YL Hurd, and SM Teutsch, eds., 2024), https://www.ncbi.nlm.nih.gov/books/NBK609471.

23 The Tobacco Control Act preempts states from regulating in certain areas, such as with respect to establishing product standards and manufacturing, but it preserves state, Tribal, and local authority to tax tobacco products, enact smoke-free laws, and restrict the sale, distribution, and possession of tobacco products, among other things. 21 U.S.C. § 387p.

24 *See, e.g.*, Public Health Law Center, *Accelerating Endgame Policies: Debunking the Industry's Illicit Trade Arguments* (2023), https://www.publichealthlawcenter.org/sites/default/files/resources/Accelerating-Endgame-Policies-Debunking-Industry-Illicit-Trade-Arguments.pdf.

25 *See e.g.*, N.Y. CANNABIS LAW § 2; MINN. STAT. § 342.02, subd. 1. *See also* NATIONAL CONFERENCE OF STATE LEGISLATURES, HOW FOUR STATES INCORPORATED PUBLIC HEALTH AND CANNABIS POLICY: A CASE STUDY (2022), https://documents.ncsl.org/wwwncsl/Health/NCSL-PH-and-Cannabis-Policy.pdf.

26 "Cigarette" is defined as "[a]ny roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco. "Cigarette" shall not include a research tobacco product." N.Y. TAX LAW § 470.1.

27 "Tobacco products" are defined as "Any cigar, including a little cigar, or tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff. "Tobacco products" shall not include research tobacco products." N.Y. TAX LAW § 470.2.

28 N.Y. TAX LAW §§ 471, 471-a, 471-B, 471-C. Note that the section of law imposing a cigarette tax explicitly states that "[t]he taxes imposed under this section shall not apply to adult-use cannabis products subject to tax under article twenty-C of this chapter." N.Y. TAX LAW § 471.7.

29 N.Y. TAX LAW § 480-a.1. A retail dealer is "[a]ny person other than a wholesale dealer engaged in selling cigarettes or tobacco products..." N.Y. TAX LAW § 470.9. *See also* 20 NYCRR § 73.1 et seq.

30 N.Y. TAX LAW § 480-a.1. *See also* 20 NYCRR § 73.1 et seq.

31 N.Y. TAX LAW §§ 480-a.6(b); 480(1)(k).

32 N.Y. TAX LAW § 480-a.

33 N.Y. TAX LAW §§ 472, 473. *See also* 20 NYCRR § 71.1 et seq.

34 N.Y. TAX LAW § 472.3. *See also* 20 NYCRR § 89.2(c).

35 N.Y. TAX LAW § 480. *See also* 20 NYCRR §§ 72.1 et seq., 89.1 et seq. A wholesale dealer is "[a]ny person who (a) sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, or (b) owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person, or (c) sells cigarettes or tobacco products to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation." N.Y. TAX LAW § 470.8.

36 "Vapor product" is defined as "any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured in to a finished product for use in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vaping pen, hookah pen or other similar device. "Vapor product" shall not include any product approved by the United States food and drug administration as a drug or medical device, or manufactured and dispensed pursuant to title five-A of article thirty-three of the public health law [pertaining to medical use of marihuana]." N.Y. TAX LAW § 1180(a).

37 N.Y. Tax Law § 1183(a), (c).

38 N.Y. Tax Law § 1180(a).

39 N.Y. Tax Law § 1183(d)(2).

40 N.Y. Tax Law §§ 1183(h), 1185.

41 N.Y. Pub. Health Law § 1399 et seq. (Art. 13-F).

42 *See, e.g.*, N.Y. Pub. Health Law § 1399-bb.1; 1399-dd-1.1(c).

43 N.Y. Pub. Health Law § 1399-cc.2. This prohibition applies to "[a]ny person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes, are sold or offered for sale."

44 N.Y. Pub. Health Law § 1399-bb. Note that local governments are narrowly preempted from acting with regard to this ATUPA provision. *See infra* notes 46-48 and accompanying text.

45 N.Y. Pub. Health Law § 1399-dd-1.

46 N.Y. Pub. Health Law § 1399-gg.

47 N.Y. Pub. Health Law §§ 1399-ll, 1399-mm.

48 N.Y. Pub. Health Law § 1399-mm-1.

49 N.Y. Pub. Health Law § 1399-hh.

50 N.Y. Const. Art. 9, § 2(c)(10); N.Y. Mun. Home Rule Law § 10.1(ii)a(12).

51 *See* Colleen Healy Boufides, Public Health Law Center, *Local Authority, Enforcement, & Commercial Tobacco Regulation in New York State* (2026).

52 Public Health Law Center, *Local Retail Environment Policies in New York State*, https://www.publichealthlawcenter.org/resources/local-retail-environment-policies-new-york-state

53 N.Y. Cannabis Law, Art. 4.

54 N.Y. Cannabis Law , Art. 3.

55 N.Y. Cannabis Law , Art. 5.

56 N.Y. Cannabis Law § 10.

57 N.Y. Cannabis Law § 11.

58 N.Y. Cannabis Law , Art. 4.

59 N.Y. Cannabis Law §§ 81, 86; 9 NYCRR Parts 128 and 129; *see also* Packaging and Labeling & Marketing and Advertising Guidance for Adult-Use Licensees, Office of Cannabis Management (March 10, 2023), https://cannabis.ny.gov/system/files/documents/2023/03/packaginglabeling-and-marketingadvertising-guidance.pdf.

60 N.Y. Cannabis Law § 131(2); 9 NYCRR 119.1(b).

61 N.Y. Tax Law § 492 et seq.

62 N.Y. Tax Law § 1180 et seq.

63 N.Y. Cannabis Law § 136.

64 N.Y. Cannabis Law § 72(1).

65 N.Y. Cannabis Law §§ 125(1), 132(1)(a), 132(8), 138-b; 9 NYCRR 123.9(f), 133.25.

66 9 NYCRR 123.10(k). *But see* N.Y. CANNABIS LAW §125.11 ("No registered organization, licensee or any of its agents, servants or employees shall sell any cannabis product, or medical cannabis from house to house by means of a truck or otherwise, where the sale is consummated and delivery made concurrently at the residence or place of business of a cannabis consumer.").

67 9 NYCRR 123.9(e).

68 N.Y. CANNABIS LAW § 130-a.

69 N.Y. CANNABIS LAW § 64.1(a), (b), (f), (j).

70 N.Y. CANNABIS LAW § 64.1(g); *see also* 9 NYCRR 120.7.

71 N.Y. CANNABIS LAW § 72(6) ("No cannabis retail licensee shall locate a storefront within five hundred feet of a school grounds as such term is defined in the education law or within two hundred feet of a house of worship.")

72 9 NYCRR 119.1(a), 119.4.

73 N.Y. CANNABIS LAW § 72.5. Note this provision applies to all premises licensed to sell cannabis products except delivery or microbusiness licensees. *See also* 9 NYCRR 123.10(a).

74 N.Y. CANNABIS LAW § 85; 9 NYCRR 123.10(g).

75 N.Y. CANNABIS LAW § 85.11; 9 NYCRR 123.10(i).

76 N.Y. CANNABIS LAW § 65.1; 125.3.

77 9 NYCRR 123.10(g)(15).

78 9 NYCRR 123.10(g)(7).

79 N.Y. CANNABIS LAW §§ 65.2(a), 85.1; 9 NYCRR 123.10(d), (g)(11)(2).

80 N.Y. CANNABIS LAW § 65.3; 9 NYCRR 123.10(g)(11)(i), (iii).

81 N.Y. CANNABIS LAW § 65.2(a), 85.1.

82 N.Y. CANNABIS LAW § 85(3); 9 NYCRR 123.10(g)(11)(iv)-(vi).

83 9 NYCRR 123.10(n).

84 9 NYCRR 123.9(c). Cannabis paraphernalia is defined as "any equipment, product or material of any kind which is primarily intended or designed for use in the preparation, consumption, or storage of cannabis products." 9 NYCRR 118.1(a)(16).

85 N.Y. CANNABIS LAW § 125.8.

86 N.Y. CANNABIS LAW § 81.7 (providing that the possession or sale "by any licensee of any cannabis product not labeled or offered in conformity" with the CCB's rules and regulations may be penalized by fine and/or by an adverse action on the license (i.e., suspension, revocation, or cancellation). *See also* 9 NYCRR 128.7, 123.10(g)(18), (19).

87 N.Y. CANNABIS LAW § 138-b.4.

88 N.Y. TAX LAW § 493.

89 N.Y. TAX LAW § 494(a)(1), (g).

90 N.Y. TAX LAW § 494(b)(1).

91 N.Y. TAX LAW § 494(a)(1), (g).

92 N.Y. TAX LAW § 494(b), 496-c.

93 N.Y. Tax Law § 1180(a).

94 N.Y. Tax Law § 1183(a), (c).

95 N.Y. Tax Law § 1183(d)(2).

96 *See supra* note 39 and accompanying text.

97 N.Y. Tax Law §§ 1183(h), 1185.

98 N.Y. Cannabis Law § 131(2); 9 NYCRR 119.1(b). For example, municipalities may not impose special fees or restrictions on cannabis businesses except in alignment with fees imposed upon comparable businesses. *See generally* 9 NYCRR 119.1(b). In addition, municipalities may not allow adult-use retail dispensaries (and other specified types of consumer-facing licensees) to be located on the same road and within 200 feet of a house of worship or 500 feet of a school (aligning with state law requirements), or within 500 feet of a public youth facility *if* the municipality as enacted a local law pertaining to this distance. 9 NYCRR 119.1(a). At the same time, municipalities may not deny rights or privileges to adult-use cannabis retailers based on their proximity to a house of worship, school, or public youth facility if the licensee preexisted the house of worship, school, or public youth facility. 9 NYCRR 119.1(b)(6).

99 N.Y. Cannabis Law § 131(1).

100 Heather Trela, Rockefeller Institute of Government, Marijuana Opt-Out Tracker, https://rockinst.org/issue-areas/state-local-government/municipal-opt-out-tracker.

101 N.Y. Cannabis Law § 131(1).

102 N.Y. Cannabis Law § 76.1. Municipal opinion is also part of the renewal cycle; applicants must again notify the municipality when they seek renewal every two years. *See* N.Y. Cannabis Law § 76(6)(f); Municipality Frequently Asked Questions, Office of Cannabis Management 1, https://cannabis.ny.gov/system/files/documents/2025/07/community-board-adult-use-questions.pdf.

103 *See* N.Y. Cannabis Law § 76.4; 9 NYCRR 119.3(d).

104 N.Y. Cannabis Law § 76.4.

105 N.Y. Cannabis Law § 131(2); 9 NYCRR 119.2.

106 9 NYCRR 119.2(a)(1)-(4) (establishing limits for local hours of operation restrictions depending on type of licensee (adult use retail dispensary versus on-site consumption) and population size).

107 9 NYCRR 119.2(a)(5).

108 9 NYCRR 119.2(a)(6).

109 9 NYCRR 119.2(a)(7).

110 9 NYCRR 119.2(a)(8). Under 9 NYCRR 119.1(b)(7) and (8), municipalities are preempted from adopting certain standards related to ventilation and odor control for adult-use on-site consumption sites.

111 9 NYCRR 119.2(a)(9).

112 9 NYCRR 119.2(a)(10). This provision states that the distance requirement cannot be greater than 500 feet. In addition, 9 NYCRR 119.1(a) prohibits municipalities from enacting local laws allowing less than 500 feet between specified licensees and public youth facilities. Read together, if a municipality chooses to regulate the distance between specified licensees and public youth facilities, it appears the distance requirement must be 500 feet.

113 *1086 OCR LLC v. Town of Riverhead Zoning Bd. of Appeals*, 2025 N.Y. Slip Op. 51732(U), 2025 WL 3086081 (Sup. Ct., Suffolk County, 2025) (unpublished).

114 A 4 percent local excise tax applies to retail cannabis sales and is to be distributed among local governments based on the location of the dispensary and proportion of sales. N.Y. TAX LAW § 493(c), 496-b(b)(2). *See also What is in the Law: Taxation and Revenue*, Office of Cannabis Management, https://cannabis.ny.gov/system/files/documents/2024/06/5.22-cannabis-management-fact-sheet-taxation.pdf.

115 N.Y. CANNABIS LAW § 79 (providing that an Office of Cannabis Management inspection of a licensed premises may include ensuring compliance with the Cannabis Law, its accompanying regulations, "and other applicable state and local building codes, fire, health, safety, and other applicable regulations").

116 Public Health Law Center, *Nicotine Analog Regulation in New York State* (forthcoming 2025).

117 N.Y. CANNABIS LAW § 85(3); 9 NYCRR 123.10(g)(11)(iv)-(vi).

118 N.Y. CANNABIS LAW § 131(2); 9 NYCRR 119.1.

119 Public Health Law Center, *Comprehensive Tobacco Retailer Licensing* 8 (2023), https://www.publichealthlawcenter.org/sites/default/files/resources/TRL-Model-Ordinance-NYS.pdf.

120 *Id*. at 12.