

American Planning Association – Delaware Chapter 2023 Annual Training

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LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

New statute is in Title 4, Ch. 13.

§ 1308. Private Property Rights.

- Nothing in this chapter prohibits a person, employer, school, hospital, detention facility, corporation, or any other entity who occupies, owns or controls a property from prohibiting, or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana on, or in the property, except that in the case of the rental of a residential dwelling: a landlord may only prohibit the possession of marijuana or the consumption of marijuana by non-smoked means. if one or more of the following applies



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1. The building is the primary residence of the landlord, no more than 3 rooms in the building are rented to tenants and no more than 3 tenants occupy such building.
2. Residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious or similar services including prisons, student housing provided by a college or school, long term care facilities and hospitals.
3. Failing to prohibit marijuana possession or consumption would violate federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1310. Lawful Operation of Marijuana-Related Establishments.

(b)(2) a holder of license in a retail marijuana store may not sell or deliver marijuana or marijuana products on Thanksgiving, Easter, or Christmas, or between the hours of 1:00 a.m. and 9:00 a.m. on Mondays through Sundays, and on Sunday before noon or after 8:00 p.m. Any municipality with a population of 50,000 or more may limit sales under this subsection within the boundaries of the municipality to a maximum of 4 hours on Sunday as established by the ordinance of the municipality. The closing hours for the days of the week other than Sunday may be made earlier in a municipality having a population of 50,000 or more persons by ordinance of the municipality provided however, that such ordinance be consistent with the State and Federal constitutions and must treat all businesses fairly. During the months of October through December, a holder of a license for a retail marijuana store may have sales take place beginning 8:00 a.m. on Fridays through Saturdays and 10:00 a.m. on Sundays.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1310. Lawful Operation of Marijuana-Related Establishments.

(b)(3) Marijuana and marijuana products may not be sold in an establishment licensed to sell alcoholic liquors under this title.



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LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1351. Local Control.

- (a) A municipality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores through the enactment of ordinance or through an initiated referred measure.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1351. Local Control.

(b) A municipality or county may enact ordinances or regulations that are not in conflict with this chapter or in conflict with regulations enacted by the Commissioner governing the time, place, manner and number of marijuana establishment operations. A municipality or county may establish civil penalties for violation of an ordinance or regulation governing the time, place and manner that a marijuana establishment may operate in such municipality or county.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1352. Procedural Requirements Governing Commissioner's Action; Hearing; Appeal.

(b)(1) If 10 or more persons who reside or own property within 1 mile of the premises where the license is to operate or in any incorporated areas located within 1 mile of the premises where the license is to operate file a protest against the issuance of the license with the Commissioner within 30 days from the filing of the application, then a hearing must be held to consider the application and protest and, specifically, the concerns of the members of the community within which the license is to operate.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1354. Grounds for Refusal of License; Transfer or Extension of Premises.

- (a) The Commissioner may not grant a license under this chapter in any county or subdivision thereof, if granting a license is contrary to the law of any municipality or county adopted under § 1351 of this chapter.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1354. Grounds for Refusal of License; Transfer or Extension of Premises.

(d) The Commissioner may refuse to grant a license to sell marijuana, marijuana products, or marijuana accessories to any new establishment to be located in the vicinity of a church, school, college or substance abuse treatment facility as defined under § 2203 of Title 16. The Commissioner may issue a license to any establishment located in the vicinity of a church, school, or college when such establishment has been located in a place prior to the time any church, school, or college may thereafter be located in the vicinity of such establishment.



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1354. Grounds for Refusal of License; Transfer or Extension of Premises.

- (e) The Commissioner shall refuse to grant a license for the sale of marijuana, marijuana products, or marijuana accessories when there is an existing licensed establishment of the same type within 1200 feet by accessible public road or street in any incorporated city or town, or within 1 mile by accessible public road or street in any unincorporated or rural area. If there is an existing licensed establishment less than 1 mile but more than nine tenths of 1 mile by accessible public road or street in any unincorporated or rural area, the Commissioner may grant such license. This subsection does not apply to any of the following:



LAND USE IMPLICATIONS OF DELAWARE'S MARIJUANA CONTROL ACT - KEY PROVISIONS

§ 1354. Grounds for Refusal of License; Transfer or Extension of Premises.

(g) The Commissioner may not grant a new license of any type and may not grant an extension of premises of an existing license of any type unless the application for said new license or for said extension is accompanied by a Certificate of Compliance from the appropriate political subdivision showing all of the following:

1. That the premises where the license is to be used are properly zoned for the applicant's intended use.
2. That all necessary permits have been approved.
3. That the applicant has complied with all other applicable licensing requirements of the appropriate political subdivision.



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§ 1361. Grounds for Cancellation, Suspension, or Fines.

- (c) It is a violation for a licensee to do any of the following:
1. Violate any provision of this chapter, any regulation of the Commissioner, or any applicable regulation of the Department of Health and Social Services.
 2. Admit guilt or be adjudged guilty of violations of local, municipal, county, or State regulations, ordinances, or codes related to the operation of a licensed premises.



OTHER CONSIDERATIONS – TYPES OF FACILITIES

- Four types of facilities contemplated by the Code:
 - Retail Stores
 - Cultivations Facilities
 - Infused-Products Manufacturing
 - Testing
- Ancillary Services not currently contemplated by the Code:
 - Off-premises Storage
 - Transport/Courier Services
 - Social Consumption
 - Retail of MJ accessories or paraphernalia



OTHER CONSIDERATIONS – LOCAL RESTRICTIONS

- Location Restrictions
 - Zoning
 - Permitted Use, Conditional Use, or Prohibited
 - What will applicants be required to submit?
 - Concentration of Licensed Facilities
- Proximity Restrictions
 - Schools or Daycare Facilities
 - Drug Treatment Centers
 - Others?



OTHER CONSIDERATIONS - MISCELLANEOUS

- Business Licenses/Permits
- Dealing with Modifications or Changes to Facilities/Uses & Renewals
- Building Codes
- Water & Utility Use
- Fire Code/Security
- 23 States have now legalized recreational use – there are resources for additional guidance on implementation
 - Colorado was the first, the City of Denver’s website has a timeline with links that may be helpful for folks interested in more info: [https://www.denvergov.org/Government/Agencies-Departments-Offices-Departments-Offices-Directory/Marijuana-information/Laws-rules-and-regulations](https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Marijuana-information/Laws-rules-and-regulations)

2023 MARIJUANA-LAND USE CASES

- *Green Genie, Inc. v. City of Detroit, Michigan*, 63 F.4th 521 (6th Cir. 2023)
- *Lucas v. City of Pomona*, 309 Cal. Rptr. 3d 605 (Ct. App. 2023)
- *State ex rel. Organic Remedies Mo, Inc. v. Bd. of Zoning Adjustment of St. Louis Cnty.*, 674 S.W.3d 508 (Mo. Ct. App. 2023)
- *Ashford v. City of Brownsville*, 2023 WL 6200326 (D. Or. Sept. 22, 2023)
- *City of Malden v. Benevolent Botanicals LLC*, 2023 WL 6890669 (Mass. Land Ct. Oct. 19, 2023)

