



Early lease considerations for cannabis dispensaries, Part II - by Daniel Dornfeld and Gregory Carman

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New York has legalized adult-use marijuana under the Marihuana Regulation and Taxation Act (“MRTA”). Unfortunately, what that means for retail sellers remains unclear because the Office of Cannabis Management has not released the official regulations governing adult-use marijuana. Regardless, we know enough to determine some considerations for leasing space as a cannabis

dispensary. In our last article, we suggested first investigating whether a municipality has opted out of allowing cannabis sales and whether the landlord's financing will prevent it from leasing space as a cannabis dispensary or on-site consumption facility. The prospective tenant will also need to include ample license contingency time in their lease and be prepared to convince landlords why they should allow retail cannabis sales in their shopping center.

How can you procure the license to sell cannabis before committing to the lease? Tenants will need relatively long contingency dates in their leases to allow them to procure a license. A prospective cannabis sales applicant should begin securing a premise from which they plan to operate before filing their application with the Cannabis Control Board. While it is not required that an applicant possess a space when they file their application, they must at least know in which municipal jurisdiction they plan to operate. Applicants must notify the municipality at least thirty days before filing their application to allow the municipal officials to express an opinion to the Board either supporting or opposing granting the license. MRTA §76. However, upon final approval by the Board, no retail license will be granted unless the applicant can demonstrate possession of a premise within thirty days of final approval. §72. At this point, the applicant must produce a lease agreement or other writing for a term not less than the license period. § 72. If an applicant is not close to having a signed lease when that license is granted, then there is a good chance they will not be able to utilize their license and may be subject to substantial delays.

Does a landlord want cannabis sales? Regardless of whether cannabis sales are legal or not, we can expect that some landlords will be reluctant to lease space to tenants that sell cannabis. Convincing landlords to lease space will mean overcoming preconceptions on what a cannabis dispensary will look like. Therefore, part of the art of leasing space includes convincing the landlord that it makes good business sense to have retail cannabis sales in their center. Fortunately for cannabis tenants, many retail landlords have been negatively impacted as mom-and-pop shops have been put out of business by Amazon and its ilk. However, cannabis dispensaries will be required to have an actual location for the foreseeable future. For example, a cannabis dispensary can be a boon to a shopping center because the tenant cannot be replaced by mail order and will encourage patronage to the other complementary businesses within the shopping center.

When MRTA went into effect, the initial euphoria of those proponents of adult-use marijuana were tempered by questions about what those sales would look like. Many elected officials chose to err on the side of caution and adopted a "wait and see" approach. Publishing the regulations and the examples set by the municipalities that embraced adult-use marijuana at the outset will answer many of these questions. Potential distributors anxious to start their new ventures will benefit by taking the aforementioned considerations into account. By considering these issues now, and taking the necessary preliminary steps, prospective applicants will prevent a lot of wasted effort and position themselves to be at the forefront of the retail cannabis industry.

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