

# Municipal Revenue and Taxation Advisory Committee

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*City of Cape May*

4/18/21

TO: MTRAC

RE: Revenue Assessment of Cannabis Licensing

A municipality has no authority to issue these licenses. The terms, conditions, and qualifications for each of them is the sole authority of the State Cannabis Commission, as is the monitoring and enforcement of its regulations for the operation of these businesses.

**(Class 1 License) 2% of Gross Sales Receipts**

- Cannabis cultivator/grower –grows, cultivates, or produces cannabis in New Jersey, and sells – sells and may transport to other cannabis growers, processors, wholesalers, or retailers, but not consumers.

**(Class 2 License) 2% of Gross Sales Receipts**

- Cannabis manufacture – processes cannabis items in New Jersey by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling – optionally transporting these items to other cannabis processors, wholesalers, or retailers, but not to consumers.

**(Class 3 License) 1% of Gross Sales Receipts**

- Cannabis wholesaler – purchases or otherwise obtains, stores, sells or otherwise transfers – may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.

**(Class 4 License) No Tax**

- Cannabis distributor – transports cannabis items in bulk intrastate, from one licensed cannabis establishment to another licensed establishment. – may engage in temporary storage as necessary to carry out transportation activities

**(Class 5 License) 2% of Gross Receipts**

- Cannabis retailer – purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacture or cannabis wholesalers and sells these to consumers from a retail store. – may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. –

- Must accept consumer purchases to be fulfilled from its retailer store that are presented by a cannabis delivery services to be delivered to the consumer.

**(Class 6 License) No Tax**

- Cannabis delivery service – provide courier services for consumer purchases of cannabis items fulfilled by cannabis retailer – make deliveries of cannabis items and related supplies to consumers.
- Delivery – transportation of cannabis items and related supplies to a consumer. – includes the use by a licensed cannabis retailer of any 3rd party technology platform to receive, process, and fulfilling orders by consumers
- provided that any physical acts in connection with filling the order and delivery must be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer

A municipality may prohibit the operation of any one or more these six classes of these cannabis businesses but cannot prohibit the delivery of cannabis items and related supplies by a delivery service.

Municipalities have 180 days (until August 21, 2021) to act to **either prohibit or limit:**

- the number of cannabis establishments, distributors, or delivery services.
- the location, manner, and times of operation, and
- can set civil penalties for violation of its municipal ordinances regarding this statute.

If municipality takes no action within 180 days, any class of cannabis establishment or distributor will be permitted to operate in the municipality, and depending on the type of establishment, be considered a permitted use in certain zones.

If a municipality fails to act by August 22, 2021 regarding any or all classes of cannabis business operating within that municipality, it can take no action regarding the cannabis businesses for a minimum of five years.

**Findings:**

1. The Regulations governing the licensing and operation of businesses seeking all Classes of Cannabis License are currently under development by the State. Municipalities have little time remaining to adequately assess those regulations.
2. Given the likely size and complexity of businesses operating with **License Classes 1-4**, Cape May is an unlikely location for any of these businesses without a serious negative impact on the residents and visitors. Further the monetary benefit cannot be calculated because the potential amount of Gross Sales Receipts is unknowable, as is the eventual cost of administering Cape May's responsibilities under this act.
3. The permitting of a **Class 5 – Retail license** within Cape May would enable to the city to levy a 2% tax on the gross sales receipts of the licensee. The amount to be raised for the city is unknowable at this time; however, it can be assumed that for every \$100,000 in gross sales receipts for that shop the city would receive \$2,000 in tax revenue. It is likely that the municipal cost for the administration and collection of that tax will exceed the revenue yield.

4. Further, since the city has banned the consumption of recreational cannabis in any public space within the city, the enforcement of that prohibition becomes problematic and will impact the current scope and cost of public services. A retail site is a public accommodation. The spaces around the shop, and perhaps the shop itself, would fall under the city's ban on public consumption.
5. Were a cannabis retail shop to be permitted, by the statute that shop would also be a distribution site for deliveries from across the state under the terms of a Class 6 license. The municipality is prohibited from the levy of any tax on a delivery service.
6. While the statute defines "cannabis paraphernalia" it appears silent on whether a municipality can ban the sales of such equipment. If a municipality acts to prohibit the Class 5 license it could also consider banning the sale of "cannabis paraphernalia" in any retail establishment, as consistent with its ban of both retail licenses and public consumption.
7. If the city act to prohibit any or all of the six classes of license, there will be the likelihood of city revenue from fines and penalties for the violation of city ordinances.

**RECOMMENDATION:**

Given the unknown amount of potential revenue to the city sufficient to compensate for increased cost and types of municipal services due to the presences of cannabis businesses and using its authority under PL 2021, c 16 -Sec 31, **City Council should act immediately to amend its ordinances to prohibit each of the six Classes of Cannabis Business.** Fines and penalties for the violation of those ordinances should also be included.

These resolutions must be adopted and effective prior to August 22, 2021.

In addition, the Council should consider adopting a companion resolution banning the sale of "cannabis paraphernalia", with appropriate fines and penalties, within the limits of the city.