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## September 12, 2018

### **Urgent Alert: Cannabis/Marijuana Legalization and the Local Option Tax**

As you are aware, Governor Murphy identified the legalization of the adult use of marijuana as a top priority for his Administration. Senate President Sweeney also supports this and has publicly indicated that there is sufficient support in the Senate to advance enabling legislation and Speaker Coughlin recently stated that he supports legalization. With the State's three leaders all on record in support, it is virtually certain that legalization will be realized in the near future. Significant issues remain, however, and there is some disagreement over the form of such a bill, though it is expected that a bill will head to the Governor this fall.

While a number of bills have been introduced, a consensus bill has not yet been introduced. We note that every bill and concept proposed for discussion includes an "opt-out" provision for municipalities, meaning marijuana would be legalized in all municipalities unless a municipality takes affirmative action to opt-out. Further, recent press reports indicate a consensus among legislative sponsors, though it does not reference agreement of the Murphy Administration, on a number of provisions, including:

- A local option tax of up to 2% to be retained by the host municipality;
- The creation of five-member commission to oversee marijuana regulations, permitting and an enforcement division. The Governor would appoint three members and the Legislature would appoint the remaining two.
- Automatic eligibility for those convicted of marijuana possession for criminal record expungement; individuals would still need to go through a process for expungement.

Other press accounts and word of mouth indicate that a bill to expand the State's medical marijuana program would move concurrently with an adult, recreational use bill. Additionally, it is generally reported that a total tax on the industry would be about 25%, not including any local option tax. It is also likely that there will be four distinct types of licenses: 1) growth/cultivation; 2) manufacturing; 3) transportation/distribution and, 4) retail. It is our understanding that home-grown products will not be authorized. We expect that a municipality will have the option to opt-out of any or all of the four license types.

The League reached out to partners such as the New Jersey Urban Mayors Association (NJUMA) and the New Jersey Conference of Mayors (NJCM) and met with the prime Senate sponsor, Senator Nick Scutari, in early August.

The League, NJUMA, and NJCM followed up with the Senator with comments and recommendations. In our correspondence, we stated that all three organizations are generally supportive of the expansion of medical marijuana and decriminalization, but are not prepared to support the current legislative proposals for the legalization of recreational marijuana. But if such a bill advances, there should be provisions that support and protect the interest of New Jersey's municipalities. In doing so, we offered a number of recommendations, including:

- Any legislation authorize municipalities to implement a local excise tax of up to 5% on any or all of the four proposed licenses;
- Licensees should be required, as a condition of the license, to enter into a host benefit agreement with the municipality. This would be similar to the model used in Massachusetts;
- There should be a mechanism in place to verify that the revenues collected as a result of a local excise tax are being returned appropriately to the host municipality;
- Licensees should also be subject to any local license or mercantile fees, as would be the case with any other business.

Of revenues collected by the state, we further suggest the following:

- Portions of this funding be dedicated for specific purposes to assist local law and health enforcement and public safety, including funding for Drug Recognition Experts (DREs); and,
- The development of a statewide DUI protocol.

As noted above, the Legislative sponsors, according to press reports, are in agreement on a 2% local option tax. A municipality which chooses to opt-in should be assured that revenues will offset the costs of enforcement. Otherwise other taxpayers in the community will subsidize the industry. Based on our discussions with Mayors and with our fellow Leagues in states that have legalized marijuana, it is our belief that 2% is insufficient to offset costs and is an incentive for municipalities to opt-out. Enforcement will fall almost entirely on municipal governments, which will need to absorb costs associated with law and code enforcement, health services, education and social services.

**We urge you to contact your Legislators and ask that if they support legalization, to also support an up-to 5% local option tax.**

**Please take immediate action** and talk to your Legislators on this issue now and let them know how you feel. There are issues apparent in any legislation that would legalize the recreational use of marijuana that would impact all municipalities regardless of whether you would opt-in or opt-out. So no matter your position on the issue, please advise your Legislators of the concerns and recommendations covered in this correspondence. In particular, it is critical to communicate that the suggested 2% option tax is insufficient and should be changed so that municipalities can choose to implement an up to 5% fee.

If you have any questions or comments, please contact League Assistant Executive Director Mike Cerra at either [mcerra@njslom.org](mailto:mcerra@njslom.org) or 609-695-3481, x120.

Thank you,

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