



# This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop & Del Giorno LLC

July 13, 2018 Edition



## In the News – New York State



### NYS DOH Releases Marijuana Legalization Report

The New York State Department of Health today released its much-anticipated report on the legalization of marijuana, asserting that “the creation of a regulated marijuana program would enable NYS to better control licensing, ensure quality control and consumer protection, and set age and quantity restrictions.”

The 74-page report details State Health Commissioner Howard Zucker’s comments last month that the “pros of a regulated program outweigh the cons,” including generating between \$248 and \$678 million in annual tax revenue, curbing the amount of arrests for black and Latino residents on marijuana-related offenses, and providing a viable treatment option to combat the State’s opioid epidemic.

Table 2: Retail Price/Retail Tax				
	\$297 per ounce		\$374 per ounce	
<b>Sales and Tax Revenues</b>	<b>7%</b>	<b>15%</b>	<b>7%</b>	<b>15%</b>
Retail Sales	\$1.6 billion	\$1.4 billion	\$3.1 billion	\$2.9 billion
Marijuana Retail Tax	\$110.3 million	\$215.2 million	\$219.5 million	\$428.1 million
State and Local Sales Tax	\$137.8 million	\$125.4 million	\$274.2 million	\$249.6 million
<b>Total Tax revenues</b>	<b>\$248.1 million</b>	<b>\$340.6 million</b>	<b>\$493.7 million</b>	<b>\$677.7 million</b>

Note: Estimates based on illegal market price (estimated average) \$270 and \$340 per ounce.

According to the report, there is growing public support for legalization of marijuana. On May 3, 2018, a Quinnipiac University poll found that support for legalized marijuana is at an all-time high in NYS, with 63 percent of New York voters in support of legalizing regulated adult-use marijuana.

The DOH report explains that areas for concern – including teen usage and impaired driving -- can be mitigated with regulation and proper use of public education that is tailored to address key populations. It asserts that regulating marijuana enables public health officials to minimize the potential risks of marijuana use through outreach, education, quantity limits at point of sale, quality control, and consumer protection.

"It is imperative that a regulated marijuana program contain all necessary safeguards and measures to limit access for individuals under 21, minimize impaired driving, provide education and tailored messaging to different populations, and connect people to treatment if needed," the report states.

The report concluded that it will be essential to ensure public safety and the integrity of the legalization program by:

- Enforcing the under-21 purchasing ban;
- Reducing the illegal market and preventing diversion;
- Ensuring adequate security at cultivation and dispensing facilities;
- Employing a robust monitoring and oversight system with the ability to issue fines for violations and revoke licenses as needed;
- Promoting further study of methods of detecting impaired driving and the impact of legalization of marijuana on the safety of the State's roadways;
- Enhancing the State's successful anti-DWI efforts to include impaired driving;
- Educating the public as to the potential risks of excessive use;
- Imposing fines for providing false identification;
- Determining hours of operation restrictions for retail establishments; and
- Imposing a tracking, reporting and compliance system for the regulated marijuana program.

Report: [https://www.health.ny.gov/regulations/regulated\\_marijuana/docs/marijuana\\_legalization\\_impact\\_assessment.pdf](https://www.health.ny.gov/regulations/regulated_marijuana/docs/marijuana_legalization_impact_assessment.pdf)

Earlier this week, DOH expanded the list of qualifying conditions for medical marijuana to include any condition for which an opioid could be prescribed. Effective immediately, registered practitioners may certify patients to use medical marijuana as a replacement for opioids. This allows patients with severe pain -- that does not meet the definition of chronic pain -- to use medical marijuana as a replacement for opioids.

In addition, the regulation adds opioid use disorder as an associated condition. This allows patients with opioid use disorder who are enrolled in a certified treatment program to use medical marijuana as an opioid replacement.

Opioid replacement joins the following 12 qualifying conditions under the state's Medical Marijuana Program: cancer; HIV infection or AIDS; amyotrophic lateral sclerosis (ALS); Parkinson's disease; multiple sclerosis; spinal cord injury with spasticity; epilepsy; inflammatory bowel disease; neuropathy; Huntington's disease; post-traumatic stress disorder; and chronic pain.

As of July 10, 2018, there are 62,256 certified patients and 1,735 registered practitioners participating in the program.

# NYS to Require Health Insurers to Cover Contraception Without Cost-Sharing

Following an Executive Order by Governor Andrew Cuomo, the State Departments of Financial Services and Health issued regulations this week mandating health insurers to cover contraception without cost-sharing.

Under the regulations, all insurers offering plans in New York State must cover over-the-counter emergency contraception in addition to all other contraceptive drugs, devices or other products for women approved by the Federal Food and Drug Administration and, as well as the dispensing of 12 months of contraceptive at one time, all without co-insurance, co-pays or deductibles.

The regulations codify guidance issued in January 2017 regarding information that must be provided in formularies regarding contraceptives, including noting which contraceptives are covered without cost-sharing. Insurers will be required to publish an easily accessible, up-to-date, accurate and complete list of all covered contraceptive drugs, devices and other products on their formulary drug lists, including any tiering structure and any restrictions on the manner in which a drug may be obtained.

The updated DFS regulation mandates that health insurers:

- Expand coverage requirements for contraceptive drugs, devices or other products for women approved by the Federal Food and Drug Administration.
- Require coverage for emergency contraception with no cost sharing when acquired in any lawful manner including on an over the counter basis from an out of network pharmacy.
- Permit a woman to fill 12 months of a prescribed contraceptive at one time, removing the required 3-month trial period.
- Cover voluntary sterilization procedures for women and over-the-counter contraceptives without cost-sharing.
- Do not place restrictions or delays on contraceptive coverage not otherwise authorized under the regulation. This provision would prohibit quantity limits and other such restrictions.



**Governor Cuomo Speaks at Rally Announcing Executive Order.**

The accompanying DOH regulations permit a woman insured through Medicaid to fill 12 months of a prescribed contraceptive at one time, whereas previously, the limit was three months.

## Chapters of the Laws of 2018



**Chapter 112 – Sponsored by Senator Stewart-Cousins / M of A Pretlow** -- Extends the city of Yonkers occupancy tax.

**Chapter 113 – Sponsored by M of A Magnarelli / Senator Marchione** -- Relates to local government borrowing practices and mandate relief.

**Chapter 114 – Sponsored by M of A Lavine / Senate Rules** -- Relates to the administration of real property tax refunds and credits in Nassau county on class four property.

**Chapter 117 – Sponsored by Senator Murphy / M of A Jones** -- Extends certain the expiration of certain powers of the state liquor authority for an additional 3 years.

**Chapter 118 – Sponsored by Senator Seward / M of A Magee** -- Relates to ice cream or other frozen desserts made with wine, beer or cider.

**Chapter 119 – Sponsored by Senator Golden / M of A Cahill** -- Relates to extending workers' compensation coverage to certain TNC drivers.

**Chapter 120 – Sponsored by Senator Hannon / M of A Gunther** -- Enacts the drug take back act.

## In the News – New York City



### Mayor and City Council Appoint Members to The Nightlife Advisory Board

***The 14-member body will advise the Mayor and the City Council on issues affecting the nightlife industry***

Mayor Bill de Blasio, Speaker Corey Johnson, and Council Member Rafael Espinal this week announced the appointment of the 14 members of the City's first-ever Nightlife Advisory Board.

As a complement to the newly formed Office of Nightlife, the all-volunteer board is charged with making recommendations to the Mayor and City Council on ways to improve regulations and policies that impact nightlife establishments.

The Nightlife Advisory Board will issue formal recommendations to the Mayor and the Council that will address the regulatory structure of the nightlife industry; common complaints about nightlife establishments; public safety concerns related to nightlife; zoning, enforcement, nightlife workforce conditions and the integration of nightlife into the city's various neighborhoods. All members will serve two-year terms.

The Nightlife Advisory Board was established by the same legislation that created the City's first Office of Nightlife. In March 2018, Mayor de Blasio appointed Ariel Palitz as first Senior Executive Director of the Office of Nightlife. Housed at the Mayor's Office of Media and Entertainment, the Office of Nightlife is designed to serve as a central point of contact between City agencies, the nightlife industry, and city residents. Its mission is to promote a safe and vibrant nightlife scene that benefits businesses, residents and those who work in the industry alike.

### **Mayoral Appointees**

***José Francisco Ávila***, founder and managing member of Garufina Afro-Latina Entertainment, LLC. and Chairman of the Board of The Garifuna Coalition USA, Inc.

***Kurtis Blow***, rapper, singer, songwriter, record producer, DJ and Chairman of the Universal Hip Hop Museum who has released 15 albums over the course of his career

***DJ Tikka Masala*** composes and produces music for the Obie and Bessie award winning Brooklyn based feminist acrobatic dance company, LAVA.

***Susan Stetzer***, district manager for Community Board 3, Manhattan.

***Luisa F. Torres***, owner of Mojitos Restaurant Bar and community activist.

### **City Council Appointees**

***Robert Bookman***, regulatory and liquor licensing attorney, partner Pesetsky and Bookman.

***Marti Gould Cummings***, drag artist, LGBTQ advocate.

***Alvester Garnett***, drummer, percussionist, arts educator and advocate.

***Pedro Goico***, representative at New York Supermarket Association.

***Olympia Kazi***, architect, arts advocate and urban design critic.

***Andrew Prashak***, environmental attorney.

***Andrew Rigie***, Executive Director of the New York City Hospitality Alliance

***David Rosen***, Brooklyn and Queens bar operator, co-founder of Brooklyn Allied Bars and Restaurants.

***Susan Xenarios***, director and founder, Crime Victims Treatment Center, Mount Sinai St. Luke's and Roosevelt Hospitals



## Jacqueline Sherman Appointed Derrick Cephas Named Chair

Mayor Bill de Blasio this week announced the appointment of Jacqueline Sherman to the Board of Correction and named Derrick Cephas as Chair. Mr. Cephas had previously been acting Chair of the Board. The Board provides oversight for the Department of Correction which is tasked with establishing and ensuring compliance with minimum standards which regulate conditions of confinement, correctional health and mental health care, and sexual violence prevention in all City correctional facilities.

Ms. Sherman was appointed by the Mayor following a joint nomination by the Presiding Justices of the First and Second Judicial Departments of the Appellate Division of the Supreme Court of the State of New York, Rolando T. Acosta, Presiding Justice, Appellate Division, First Judicial Department and Alan D. Scheinkman, Presiding Justice, Appellate Division, Second Judicial Department.

She currently serves as Chief Legal and Administrative Officer at the JCCA. Prior to joining JCCA, she was Associate Commissioner for Planning, Policy and Performance at New York City's Administration for Children's Services. Previously, Ms. Sherman served as General Counsel for Public Advocate Bill de Blasio. She also served as Director of the Center for the Courts and the Community at the Center for Court Innovation and as Counsel to the New York City Council's Committee on General Welfare. She graduated magna cum laude from both Harvard Law School and Amherst College.

Mayor de Blasio appointed Mr. Cephas to the Board in October 2014 and he became Vice Chair of the Board in February 2015. He is a Partner at Weil, Gotshal & Manges LLP, where he heads the firm's Financial Institutions Regulatory practice. Prior to joining Weil, Mr. Cephas served as President and Chief Executive Officer of Amalgamated Bank. He also served as the Superintendent of Banks for the State of New York from 1991 to 1994. Mr. Cephas earned his A.B. at Harvard University and his J.D. from Harvard Law School.

## *Briefs*

### **2019 Property Tax Capped at 2 Percent**

Property tax levy growth for local governments with fiscal years that close on Dec. 31 will be capped at 2 percent for the 2019 fiscal year, according to State Comptroller Thomas DiNapoli. This figure affects the tax cap calculations for all counties, towns, fire districts, 44 cities and 10 villages.

"For these local governments, allowable levy growth will be 2 percent for the first time since 2013," Comptroller DiNapoli said. "Despite the possibility of increased tax revenue, municipal budgets will still be vulnerable to rising fixed costs and potential federal funding cuts. Local officials should proceed cautiously when crafting their spending plans for next year."

The tax cap, which first applied to local governments in 2012, limits tax levy increases to the lesser of the rate of inflation or 2 percent with some exceptions, including a provision that allows municipalities to override the tax cap.

During the 2014 through 2018 fiscal years, municipalities with a fiscal year ending on Dec. 31 had their levy growth capped at less than 2 percent.

## **NY's Department of Financial Services to Review Impact of Federal Suspension of ACA's Risk Adjustment Program**

Governor Andrew Cuomo this week directed the Department of Financial Services (DFS) to review the impact of the Trump Administration's suspension of the Affordable Care Act's Risk Adjustment Program. The Risk Adjustment Program is designed to stabilize insurance markets by providing payments to health insurance issuers that disproportionately attract higher-risk populations (such as individuals with chronic conditions) and transferring funds from plans with relatively lower risk enrollees to plans with relatively higher risk enrollees to protect against adverse selection.

As part of the Affordable Health Access Action Plan, the Governor directed DFS to review all options and prepare to implement an expanded State Risk Adjustment Program that controls health cost increases as much as possible in case the federal program is not reinstated.

## **Vision Zero: Mayor Announces Record Low Traffic Fatalities For First Six Months Of 2018**

Mayor Bill de Blasio this week announced that under the Vision Zero program, New York City had ended the first six months of 2018 with the fewest traffic fatalities ever measured in any six-month period. As of June 30th, the city had recorded 81 fatalities, the lowest ever in a six-month period, and only the second time that fewer than 100 lives had been lost in a half-year period.

The Vision Zero highlights from the first six months of 2018 include:

- Fatalities are down or even in all modes except among motorcyclists. Cyclist fatalities dropped from 10 to 7, motor vehicle occupant fatalities fell from 27 to 15, while pedestrian fatalities remained at 47. Motorcyclist fatalities have increased from 11 to 12.
- New York City's previous record-low for traffic fatalities during a six-month period was the first half of 2017, when 95 fatalities were recorded.
- Declines by borough have been largest in Manhattan (9 fatalities in 2018 compared to 21 in 2017) and in the Bronx (13 this year from 22 last year).

## Comptroller Stringer Audit Identifies \$5.7 Million in Taxes Uncollected by City

*Nearly 200 businesses working with the City owe millions in unpaid taxes*



A new audit released this week by New York City Comptroller Scott Stringer identified an additional \$5.7 million in taxes that could be collected by the City's Department of Finance (DOF). The audit found that DOF continues to pay businesses who owe past due taxes while they are contracting with City agencies. The Comptroller asserted that this occurs largely because of "simple oversight failures" by DOF that result in a breakdown of its standard process.

DOF is responsible for collecting City taxes, including from businesses, such as private contractors and companies that do business with City agencies. The purpose of this audit was to examine whether DOF is effectively collecting past due taxes from those businesses. If a business working with a City agency does not pay its taxes, DOF can temporarily hold or freeze any payments from the City to that company and, unless the taxes are then paid, DOF can take the back taxes the City is owed from those frozen funds.

The audit found, however, that DOF continues to pay companies that owe back taxes. While DOF does temporarily hold or freeze the payments, it does not take the needed steps to ultimately collect owed taxes from those funds on hold, including filing the paperwork to permanently seize the held payments and apply them to the companies' tax debts.

The audit found that although DOF has routinely held thousands of payments worth millions of dollars, it has not seized any of that money as payment for City taxes since October 2014 – more than three years ago. In some cases, DOF released the payments to vendors who agreed to pay down their tax debts, but then defaulted. The audit further revealed that DOF does not systematically track how much money it collects overall from City vendors who owe past due City taxes.

## *Coming Up*

### *New York State*

*Tuesday July 17<sup>th</sup>*

#### **To Examine the Minority and Women-Owned Business Enterprises Program**

Joint Senate Standing Committee on Labor, and Committee on Economic Development, 11<sup>th</sup> Floor Conference Room, Dulles State Office Building, 317 Washington Street, Watertown, 10 a.m.

### *New York City*

*Monday July 16<sup>th</sup>*

*Committee on Standards and Ethics*, Committee Room – City Hall, 1 p.m.

## ***Tuesday July 17<sup>th</sup>***

*Subcommittee on Zoning and Franchises*, Committee Room – City Hall, 9:30 a.m.

*Committee on Criminal Justice*, Council Chambers – City Hall, 10 a.m.

*Committee on Consumer Affairs and Business Licensing*, Committee Room – City Hall, 10:30 a.m.

*Subcommittee on Landmarks, Public Siting and Maritime Uses*, Committee Room – City Hall, 12 p.m.

*Committee on Solid Waste Management*, Council Chambers – City Hall, 12 p.m.

*Committee on Aging*, Council Chambers – City Hall, 1 p.m.

*Subcommittee on Planning, Dispositions and Concessions*, Committee Room – City Hall, 2 p.m.

## ***Wednesday July 18<sup>th</sup>***

*Committee on Finance*, Committee Room – City Hall, 9 a.m.

*Committee on Land Use*, Council Chambers – City Hall, 9:30 a.m.

*Committee on Housing and Buildings*, Committee Room – City Hall, 9:30 a.m.

*City Council Stated Meeting*, Council Chambers – City Hall, 1:30 p.m.

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