

# In New Jersey and New York, Towns Can Block Growth of Marijuana Businesses

Local Opt-Out Decisions Can Override Statewide Laws, With One Garden State Suburb Already Imposing a Ban



New York, where Hempire State Growers' hemp farm is based, has decriminalized recreational marijuana. (Getty Images)

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States across the nation are legalizing the use of recreational marijuana, with the opening of retail, processing and cultivation sites considered a potential boon for commercial real estate. But in places such as New Jersey and New York, local jurisdictions are dictating what happens next, and they are often just saying no to these cannabis businesses.

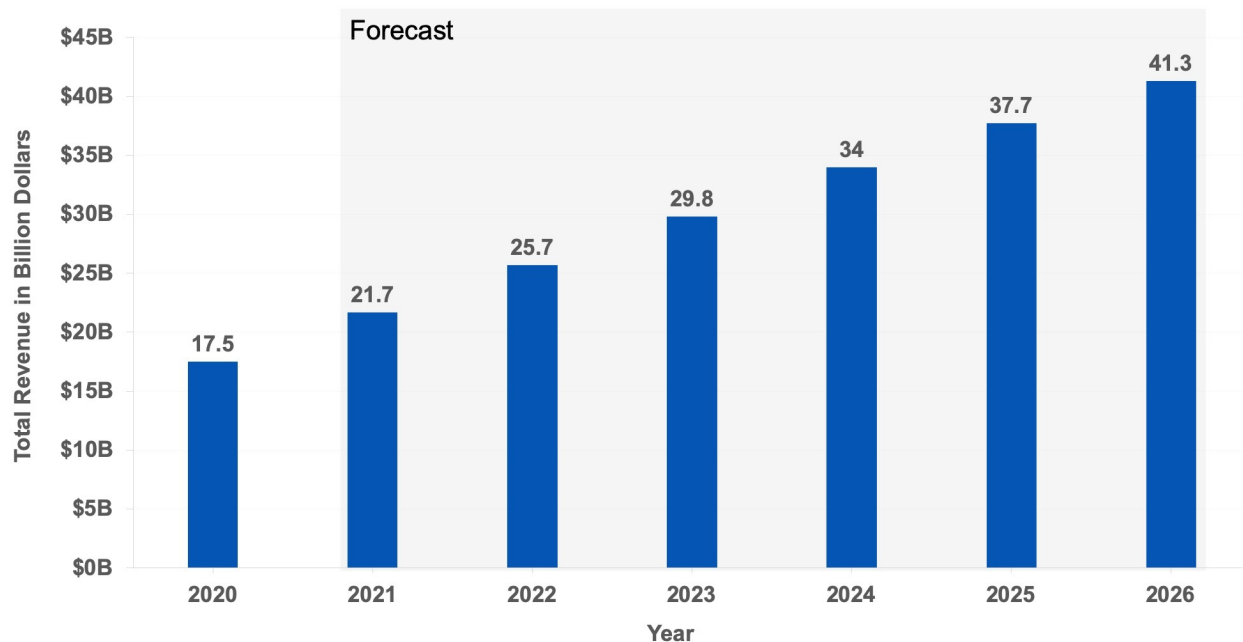
In sprawling Wayne, New Jersey, Mayor Christopher Vergano said he didn't want his suburban municipality to be known as "that town where people go to buy their marijuana." Minutes later, the local governing body voted to ban the cultivation, retail and wholesale sales, manufacturing, testing and use of cannabis — recreational as well as medical — within its borders.

With that, Wayne, a roughly 25-square-mile township in Passaic County, last week became one of the first of the Garden State's more than 500 municipalities to essentially opt out of legislation that decriminalizes the use of recreational marijuana. Bridgewater and Ocean City have done the same. The state law, signed by Gov. Phil Murphy in February and applicable only to those 21 and older, gives towns a 180-day window to prohibit the issuance of the half-dozen types of cannabis permits now allowed by the state.

Similarly, New York state's [recently passed law decriminalizing recreational marijuana](#) also allows local governing bodies to bar the issuance of retail dispensary and on-site consumption licenses for cannabis. Towns have until Dec. 31 to opt out, with officials in places such as Freeport and Rockville Centre saying they plan to do so.

Earlier this week, New Mexico legalized recreational marijuana sales and use. But the rules and regulations are different across the nation, with some states essentially giving local or county jurisdictions veto power on such sales. In addition to New Jersey and New York, states including California, Colorado, Oregon and Massachusetts allow such local prohibitions of recreational cannabis sales, and some towns have opted out.

## Outlook for Legal US Cannabis Market



Source: Curaleaf, March 2021



That's created a challenging and confusing legal patchwork for those who want to open retail stores, warehouses or cultivation sites, including those ready to make forays in New Jersey and New York.

“Similar to many state’s-rights issues, every state has adopted different language creating widespread complexity,” said Bryan McLaren, CEO of Zoned Properties, a real estate firm serving the regulated cannabis industry. “Some states, like California and now New York, have included language for local municipalities and counties to opt-in or opt-out of various areas of the cannabis industry, allowing each city or town or county to formulate their own regulatory structure. And even in states that don’t affirmatively allow local jurisdictions to opt-in or opt-out, many local municipalities and counties have attempted to do so anyway, typically resulting in legal battles to set local precedent.”

New Jersey officials have taken notice of the interest in launching recreational marijuana businesses in the wake of the state's legalization.

“I can tell you the moment the governor took that black pen signing the legislation, my phone was ringing,” Vergano said. “We’re interested in looking and establishing places in Wayne. Where are your empty stores?’ ... I said we are not interested in having that kind of establishment in Wayne Township.”

Some proponents of legal recreational marijuana claim that the drug’s onetime stigma has been tempered, with residents in places such as New Jersey approving its legalization in a referendum last November. Supporters also said towns won’t want to miss out on the new tax revenue stream that marijuana sales will provide. Towns also want jobs and fear they will lose out to bordering municipalities that welcome cannabis businesses, according to Rob Mejia, an adjunct professor in cannabis studies at Stockton University.

But the ability of municipalities to still opt out of the legislation creates some uncertainty for those who want to open retail dispensaries and cultivation sites or lease industrial space for the light manufacturing and distribution of cannabis.

It’s no small matter, because experts agree that in places such as New Jersey and New York, in order to obtain a cannabis license, a company must already have a site lined up, with a lease or letter of intent from a landlord. That was one of the big points from speakers last week at the Real Estate Cannabis Summit 2021, which was sponsored by Mannada, a cannabis educational event production company based in New York.

## ‘No Lease, No License’

“Licenses are typically tied to the real estate, and landlords have come to appreciate this fact: no lease, no license,” attorney Steve Katkov, based in Minneapolis, said in his presentation at the summit.



People wait in line to enter Green Thumb Industries' Rise marijuana dispensary in Mundelein, Illinois. In states such as Illinois, New Jersey and New York, municipalities can decide whether or not to permit such recreational cannabis retail sites to open within their jurisdictions. (Getty Images)

In the Empire State, so far New York City has said it will welcome marijuana dispensaries and cannabis cafes, which are permitted under the state's new law. But places such as Suffolk and Nassau counties, which make up Long Island, have been opposed to legalization, according to Debra Borchardt, co-founder and CEO of Green Market Report, which focuses on the financial news of the cannabis industry. Westchester County, by contrast, may be wavering from its anti-recreational marijuana stance, she said.

"I'm in Westchester, which is north of New York City," said Borchardt, who spoke at the summit. "Our representative had a couple of years ago said he was totally against cannabis. And now that he's studied it, he's had a change of mind."

In New Jersey, Paterson and Newark officials have voiced their support for recreational cannabis. Jersey City Mayor Steven Fulop also was in favor of decriminalization, but has made no quick decisions about what will be permitted in his city.

“Mayor Fulop has been a vocal advocate for the legalization of marijuana and expungement of such offenses, which greatly affects a diverse city like Jersey City as statistics show criminalization disproportionately impacts people of color,” a spokeswoman for the mayor said. “That said, it’s premature to make any commitments until the state provides clear guidelines to municipalities on how licenses will work and who is eligible. Once provided, the mayor will work closely with the City Council to put in place local regulations.”

Other towns have taken or are expected to take Wayne’s lead. On April 8, Ocean City, which doesn’t permit liquor sales, gave final approval of an ordinance that blocks businesses that cultivate, manufacture, test or sell marijuana. By banning marijuana facilities within a quarter-mile of a school, church, recreational or sports facility, the boardwalk and any residential area, the Shore town effectively keeps the industry out.



A flagship recreational and medical marijuana dispensary for Greenhouse was created in Northbrook, Illinois, in a renovation project done by Cannabis Facility Construction. (Cannabis Facility Construction)

The day before Ocean City's action last week, the Republican-controlled Wayne Township Council voted 8-1 to totally opt out of New Jersey's marijuana legalization. There was a vigorous debate, from council members and the public, on the issue. The arguments and concerns voiced by both sides are likely to be echoed at future meetings on the issue in places throughout New Jersey and New York.

Mayor Vergano and some council members said if the township didn't opt out by New Jersey's 180-day deadline, which ends Aug. 21, the next time they would be permitted to ban recreational marijuana would be in five years. Local officials are operating in the dark about recreational marijuana, they said, because the state hasn't drafted the regulations yet for the industry. In fact, the New Jersey Cannabis Regulatory Commission just held its first public meeting Monday.

"This entire ordinance is reversible," Wayne Councilman At Large David Varano said. "If we pass this today, ban everything, all of the dispensaries, whether it's medical or recreational or growing, so on and so forth — we can come back and in a week, a month a year from now and change our minds. Alternatively, if we don't take action and our window closes, as was put forth by the state the way that this legislation was written, we're locked in for five years to that decision to not take action."

## Tax Is No Boon, Mayor Says

During the virtual council meeting, Vergano had two speakers — Police Chief Jack McNiff and Robbin Gulino, coordinator of the Wayne Alliance for the Prevention of Substance Abuse — appear on screen to express opposition to marijuana being sold in town, emphasizing their fear it will end up in the hands of minors and lead them to harder drugs.

"Usually when we see these communities act like they're going to opt out, they typically opt back in ... because they get jealous seeing their neighbors with new sidewalks and new school buildings and such," Borchardt said.

But Vergano disputed the assertion that the 2% tax that New Jersey municipalities can levy on marijuana sales will be a meaningful financial windfall. An ounce of marijuana

sells for about \$275, so Wayne would only be entitled to \$5.50 on such a sale, according to the mayor.

Vergano also agreed with the police chief's assertion that marijuana was a gateway to drugs such as fentanyl and heroin. The mayor cited a case in 2019 where a driver, high on fentanyl he purchased in Paterson, struck and killed a father, son and attendant at a gas station on state Route 23 in Wayne.

Township residents who want recreational or medical cannabis can either have it delivered to them or go outside Wayne to buy it and still can partake of it within the township, according to Vergano.

"I would rather outweigh their slight inconvenience than have Wayne become 'that town' where people go to buy their marijuana," he said.

## 'Value Judgment'

A number of the meeting's attendees spoke out against the prohibition, with several having their request to appear on screen like McNiff and Gulino denied. Some of the marijuana proponents cited the inconvenience that those who are ill will face if they can't get cannabis in town.

"We have people with cancer, with [multiple sclerosis] in wheelchairs," Edward "Lefty" Grimes of East Hanover, New Jersey, told the council. "We want you to see our tears. We want you to see our suffering. ... I'm here to advocate for medical patients and for wheelchair access."

A representative of United Food and Commercial Workers International Local 182 said workers will be denied jobs because of the ban.

And 5th Ward Councilwoman Francine Ritter, a Democrat and the only one to vote against the barring of marijuana, blasted her fellow council members over the ban. The state will regulate the cannabis industry like it does alcohol, according to Ritter.



“Let’s not be hypocrites,” she said. “How many times am I looking at agendas with liquor licenses. Tonight we have one. ... Let’s be clear: This is a value judgment. ... I find this again shortsighted and hypocritical on grounds that we don’t have the same concerns about alcohol.”

Brian Chewcaskie, acting as township attorney at the Wayne council meeting, said more municipalities will be banning adult recreational marijuana sales.

“We represent several municipalities, and I will not reveal some of them because you would be surprised that certain municipalities are opting out that have elected officials that are state legislators,” he said. “I just found it very unusual that they’re looking to opt out.”



Wayne, a township in Passaic County, New Jersey, is less than 20 miles from midtown Manhattan and home to William Paterson University. (Farmartin/Wikimedia Commons)

## Stigma Still There

Three years ago, Wayne was one of 70 New Jersey municipalities that opted out of legislation that permitted medical cannabis in the Garden State. That was overturned by the new law, making it necessary to once again decide whether or not to opt out.

“I expect that we will see fewer than 70 townships ban cannabis businesses this time around,” Mejia said. “The bottom line is that every township in New Jersey is inhabited by people who use cannabis. A township can cater to this portion of their population or they can see that business go somewhere else. But banning cannabis businesses is not going to stop — or even slow — the use of cannabis.”

Some New Jersey municipalities, including Chatham, have proposed cannabis bans, according to Rob DiPisa, co-chair of the cannabis law group at Cole Schotz. While he expects more will follow suit, he said it won't have much of an impact on other towns.

“Each municipality seems to take their own path when it comes to this process and aren't necessarily influenced by neighboring municipalities,” DiPisa said. “My only hope is that the [Wayne] mayor and council did not act too quickly, as municipalities have until August of 2021 to pass ordinances to opt-out of the program. In reality, these ordinances cannot ban cannabis use within their borders, it merely excludes the local jobs and tax revenue associated with the industry.”

He added, “It's evident through these municipal bans that the stigma associated with the industry still exists and that it will take time and education about the plant before the former portrayal of this industry is truly shed.”