

# ROCHESTER BUSINESS JOURNAL

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## Plan now while legal cannabis licenses still on hold in Finger Lakes region

■ **Caurie Putnam** SPECIAL TO THE RBJ

YOU MAY HAVE HEARD that New York state's first legal, regulated sale of cannabis took place last month. It happened on December 29 at Housing Works Cannabis Co. in Manhattan. The nonprofit Housing Works is the nation's largest minority-controlled HIV/AIDS service organization that also supports formerly incarcerated and justice-involved individuals.

The opening was a huge milestone in the state's recreational cannabis efforts, which officially began in March 2021 when New York legalized recreational marijuana use for adults. But don't expect to see legal sales in the Rochester area any time soon.

Housing Works was one of the first 36 adult-use retail licenses issued by the state's Cannabis Control Board on November 21, 2022. All 36 were CAURD (Conditional Adult-Use Recreational Dispensary) licensees. Regular retail licenses have not been issued yet nor has the application portal been opened.

Additionally, there is currently an injunction in place restricting the state's ability to issue more CAURD licenses in regions including the Finger Lakes, which includes the Rochester region. This legal action stems from a lawsuit filed in November 2022 by Variscite NY



Hujer

One, Inc. whose CAURD application was denied and which claims that the application process is unconstitutional.

A "slow and brutal marathon," is how Tristan Hujer, a partner with Phillips Lytle LLP and team leader of the firm's cannabis practice, describes the legalization process over the past two years. Still, he is seeing lots of businesses with an interest in the legal cannabis space hanging in there and eagerly waiting for retail and other license applications to go live, hopefully, this summer.

"The delay is frustrating, but a lot of people have used the time to get more capital," said Hujer, who says this pause time is a great opportunity for businesses and individuals to do research, get further educated in the cannabis space, travel to other states to visit dispensaries to get ideas and network and think about what their business plans will be.

Writing a business plan right now is still a bit of a challenge as many regulations are still up in the air. Currently, the state is in a comment period on the proposed adult-use cannabis regulations.

After this comment period ends in mid-February it will be followed by an approximate one- to two-month response period and then, most likely, another comment period before the finalization of the regulations and opening of applications.



Sarkis

"Word on the street is licensing won't start until August of this summer," said Zach Sarkis, who has run the educational nonprofit NY Hemp Lab since 2018 and is the owner/operator of FLWR CITY Collective. "Needless to say, the regs are far from being set, and actual licenses are far from being issued."

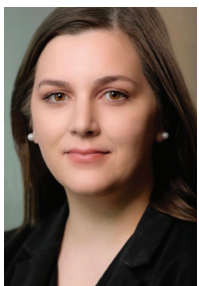
In the meantime, Sarkis, who has been an advocate for industrial hemp since 2007 and has worked in the industry in California and Oregon, says there are many things people can do right now to prepare for the application process. He also notes that there are still plenty of opportunities for people beginning to think about entering the space.

"There are so many business types that are plant-touching," said Sarkis, who organized the

region's first hemp conference in 2018 and is the chair of the education committee for the Cannabis Association of New York (CANY). "By no means is it too late to get into the space; now is a good time to get focused."

Sarkis points to CANY's website ([cany.org](http://cany.org)) as a valuable source of information for anyone interested in getting involved in any part of the state's cannabis supply chain. Though most people are interested in retail and cultivating licenses, there are many other business opportunities, including processing, distributing and delivery.

He also recommends checking out the cannabis support resources at the Rochester Public Library, which include a monthly Cannabis Industry Meet Up to learn from experts and get support from other cannabis entrepreneurs, an online cannabis newsletter, and an online CANY Regulation Read Through Series that he co-hosts.



Morley

A reading of the proposed regulations is extremely valuable for those in or looking to be in the cannabis space, according to Mary-Jane Morley, an associate with Phillips Lytle LLP and team member of the firm's cannabis practice. In her role at the firm, Morley advises businesses involved in, and ancil-

lary to, the hemp and cannabis industries regarding licensing, cultivating, processing, distributing, and retailing issues.

"Look at what's in there and what you need to do to prepare," said Morley, who also encourages people to submit their public comments about the regulations.

For those who are further along in their cannabis business planning process, Morley encourages them to speak to the municipalities they are located in to build relationships and prepare for the community impact plan portion of the application process.



Tomei

At EFPR Group, an accounting and business consulting firm headquartered in Rochester, Vince Tomei, CPA, partner and tax and business services department head, says the state's emerging cannabis industry is still "on the ground floor" but there are many things business owners can do now to prepare.

First, he suggests finding professionals who understand the unique accounting and tax issues that come with owning and operating a cannabis business.

Since cannabis remains federally illegal as a Schedule I drug, cannabis businesses are mostly cash operations — for example, credit card companies will not run transactions

and it can be challenging to find ancillary services like banking, payroll, and insurance.

Tomei recommends finding a financial professional or team that understands entity selection, cash accounting and has a thorough understanding of section 280E of the Internal Revenue Code. Per the National Cannabis Industry Association, this section bars businesses from deducting otherwise ordinary business expenses from gross income associated with the "trafficking" of Schedule I or II substances, as defined by the Controlled Substances Act.

Among the services EFPR Group offers clients is connecting them with ancillary services, though Tomei notes many are not local and could be located across the country. His team also helps clients structure their cannabis business on the tax side.

You can access the Rochester Public Library's Cannabis Support and Resources online at <https://roccitylibrary.org/spotlight/cannabis-support-and-resources-at-the-central-library/>.

Proposed regulations can be found at <https://cannabis.ny.gov/> under the section labeled Marijuana Regulation and Taxation Act. Comments on proposed regulations can be submitted by email to: [regulations@ocm.ny.gov](mailto:regulations@ocm.ny.gov) or mailed to: New York State Office of Cannabis Management, P.O. Box 2071, Albany, NY 12220.