

Cannabis Enforcement

State & Local Enforcement

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State Enforcement

Office of Cannabis Management



State Enforcement

Padlocking on First Inspection

The Office of Cannabis Management can padlock a premises where:

1. Illicit sale of cannabis
2. Sale is an “imminent threat to health and safety”
3. No portion of the sealed premises is residential or zoned for residential use
4. Illegal sales are more than a “de minimis” portion of the business activity

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“Imminent Threat to Health and Safety”

An imminent threat to health and safety is inherent in the following:

- Sales to minors
- Sales of unregulated products
- Unlicensed processing
- Violent conduct occurs at the business
- Unlicensed firearms present at the business
- Proximity to certain locations (e.g., schools, public youth facilities, places of worship)
- Product causes illness

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De Minimis

Illicit sales of Cannabis will be deemed to NOT be De Minimis where:

- The business is advertising or marketing for illicit sales
- The volume or variety of illicit product at the location

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Subsequent Inspection

Where the illicit sale at first inspection is “de minimis” or emergency circumstances do not exist, OCM will:

1. Issue a Notice of Violation and Order to Cease with a warning that continued illicit sales may result in padlocking
2. Notification to other involved or interested agencies (e.g., NYS Liquor Authority, NYS Gaming Commission, NYS Department of Taxation and Finance)
3. Padlocking will occur if continued illicit sales are found at the next inspection

State Enforcement Administrative Hearings

Administrative hearings must be conducted for businesses who are padlocked by OCM and are:

- Conducted by the Office of Administrative Hearings
- Addresses and protects the Due Process rights of shop owners
- Hearings are conducted by Administrative Law Judges

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Fines and Penalties

OCM can impose the following fines or penalties:

- Up to \$10,000 per day for each day a business is conducting illicit sales
- Up to \$20,000 per day after an initial inspection by OCM occurs and an Order to Cease was issued
- Penalties for refusing entry for inspection:
 - a. \$8,000 for the first refusal
 - b. \$15,000 for a second refusal


State Enforcement

Reporting an Incident

The OCM provides an online reporting portal for illicit unlicensed cannabis sales or other related events such as:

- Adverse health events relating to cannabis use
- Concerns relating to cannabis sales including suspected unlicensed sales, sales to minors, unauthorized on-site consumption
- Concerns relating to cannabis products, including mislabeling, product formulations, and product expiration dates

Reports can be made at: <https://cannabis.ny.gov/report-an-incident>



County and City Enforcement

County and City Enforcement

Padlocking - Cannabis Law § 131

- County and City governments are provided with similar rights to conduct regulatory inspections of retail cannabis sales businesses and to seal and padlock businesses for illicit cannabis sales if the County or City has a local law in place allowing for the same
- Local legislation must include:
 - o Consistent enforcement
 - o Procedures for inspections, hearings, and padlocking mirroring the OCM processes
 - o Hearings must occur in the applicable City or County Court within 3 days with decisions to be issued within 4 days of the hearing for instances where padlocking occurred at the first inspection
 - o OCM reporting and liaison requirements
 - o Filing requirements
- Notably – this power is NOT provided as an option for Towns and Villages

County and City Enforcement

Regulatory Inspections - Cannabis Law § 131

- Regulatory inspections can be conducted to determine whether a business is conducting appropriately licensed sales
- If, upon inspection, illicit sales are found to be occurring, the County or City can:
 1. Issues a Notice of Violation to cease unlicensed activity and establish potential penalties for failure to cease
 2. Seize any illicit cannabis product
 3. Issue an Order to Seal (padlocking) as appropriate

County and City Enforcement

Fines - Cannabis Law § 131

- Fine ranges are set statutorily by New York State and are substantially more limited than the fines that can be imposed by the OCM
- Fines are a minimum of \$100 and a maximum of \$10,000 per day for each day a business is conducting illicit sales
- Statute includes a maximum total fine of \$25,000
- Fines can only be imposed by and through a court of competent jurisdiction



Town and Village Enforcement

Town and Village Enforcement

Emergency Proceedings- Cannabis Law § 16-a

- Allows a County, City, Village or Town to bring a civil action in Supreme Court for the immediate cessation of unlicensed illicit cannabis sale
- An action can be maintained following the appropriate issuance and service of a Notice of Violation/Order to Cease by the OCM, a County, or a City
- Civil action must name as defendant(s) the owner(s), lessor(s), and lessee(s) of the building where the activity is being conducted

Town and Village Enforcement

Emergency Proceedings- Cannabis Law § 16-a

Procedure

1. Service of a Notice of Violation/Order to Cease by the OCM or an authorized City or County via certified mail no more than 30 days prior to a Notice of Petition or OTSC
2. Verification of continued occupancy of the tenant or individual alleged to have engaged in illicit activity no more than 15 days prior to a Notice of Petition or OTSC
3. Notification to the OCM at least 7 days prior to a Notice of Petition or OTSC
4. Filing of a Notice of Petition or Order to Show Cause and service of the same “on” the property via posting and certified mailing, and service on individuals or entities as permitted by the CPLR
5. Relief sought can include a preliminary injunction, temporary restraining order, temporary closing order, or permanent injunction

Town and Village Enforcement

Emergency Proceedings- Cannabis Law § 16-a

Fines and Penalties

Upon a finding that the defendant “conducted, maintained, or permitted” the unlicensed activity:

- If done intentionally, a fine of up to \$10,000 per day of such intentional unlicensed activity
- Costs, disbursements, and expenses of maintaining the proceeding shall be awarded where a permanent injunction is awarded
- Up to a \$5,000 fine for the illegal removal of a restraining or closing order

Town and Village Enforcement

Eviction Actions – Real Property Actions and Proceedings Law § 715-a

- Real Property Actions and Proceedings Law § 715-a allows municipalities to “step into” the shoes of a commercial landlord to evict a commercial tenant who is illicitly selling cannabis if the landlord fails to do so
- Procedural steps include:
 1. Five-day notice to the landlord/owner of the property where illicit sales are occurring
 2. If the landlord/owner fails to initiate an eviction or “diligently prosecute” the eviction, then any “duly authorized enforcement agency of the state . . . Under a duty to enforce the provisions of penal law or of any state or local law” relating to cannabis sales may step into the place of the landlord/owner to evict

Town and Village Enforcement

Eviction Actions – Real Property Actions and Proceedings Law § 715-a Continued

3. Initiation of eviction action – the action must name the tenant(s), any person(s) in possession of the property, any lessee or sublessee, and the landlord/owner
4. At a hearing, the Court will need to find that a violation of Article 222 of the Penal Law or Article 6 of the Cannabis Law (unlicensed sale of cannabis) occurred, and can order the following relief:
 - a. Immediate removal of the commercial tenant
 - b. Imposition of a fine up to 3X the rent charged for the duration of the violation
 - c. Payment of reasonable attorney's fees
 - d. Payment of all imposed fines and fees is the joint and several liability of all respondents to the action

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Eviction Actions – Outstanding Questions

The statute, which became effective in May of 2023, has not been heavily litigated and several potential interpretation issues remain

- The statute states that the eviction can occur where a violation occurs and the “property, or portion thereof being used for such unlicensed activity, is not occupied for any other licensed or lawful purpose.”
- Proof of violations – is a copy of a notice from the OCM sufficient? Controlled buys? Photos of advertising?

QUESTIONS?

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