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MEMORANDUM – PRIVILEGED AND CONFIDENTIAL

TO:

FROM: Fred Semrau, Esq.

DATED: February 24, 2021

RE: LEGAL UPDATE – ADOPTED NEW JERSEY CANNABIS LEGISLATION

In response to the legalization of cannabis and the legislation signed by the Governor on February 22, 2021, we are providing you with an immediate overview of some of the issues and decisions that the governing body will need to consider over the next few months.

1. Deadline for recreational cannabis “opt-out” zoning ordinances:

The law provides that municipalities will have until August 21, 2021 to adopt ordinances to opt out of certain recreational cannabis business operations at the municipal level. This time period will provide ample opportunity to take the appropriate and legal steps to effectuate local policy.

2. Areas of consideration to be addressed as a result of this legislation:

A. Enforcement & Public Safety: The Attorney General is currently in the process of communicating with Chiefs of Police throughout the State. Police departments will have a host of legal and enforcement considerations. We will certainly be available for any questions the Chief may have.

B. Zoning: In the coming months, an important decision will need to be made as to whether the municipality wishes to prohibit or permit recreational cannabis businesses, including cultivation and retail (but not delivery) from operating within its boundaries. If the municipality does not enact an ordinance by August 21, 2021 prohibiting operation, it will automatically lose the ability to restrict cultivation and wholesale in any industrial zones. Additionally, retail sale will be considered a conditional use in business/commercial zones. If the municipality adopts ordinances to allow these types of uses, it will also be authorized to adopt ordinances requiring local licensure, limiting the number and type of businesses, and restricting the time, location and manner of operations. However, if a municipality does nothing at all by August 21, 2021, it will lose the ability to zone and/or restrict these types of businesses for the next five (5)

years. If a municipality does nothing and a business becomes operational, the municipality cannot then prohibit that business from operating after the five-year period runs.

C. Employment Practices: There will be areas of concern and potential changes to your Employment Policies and Procedures regarding the use or impact on cannabis in the workplace, as well as its effect on all aspects of municipal operations. Importantly, nothing within this legislation prevents a municipality from enforcing its rules regarding a “drug-and-alcohol-free” work place. Moreover, while recreational cannabis is now legal in New Jersey, municipal employees found to be under the influence of alcohol or drugs during work hours will not be tolerated. Municipal employees still remain subject to all other local, State and federal laws that may apply to their position (i.e., Commercial Driver’s License law, which preclude anyone from driving a commercial vehicle and using cannabis). To that end, Personnel Policy Manuals should be reviewed and updated, especially as to drug testing, to convey the municipal employer’s expectations in consideration of this new legislation.

D. Taxation: Depending on the types of licenses the municipality decides to permit, the law provides that a municipal tax may be imposed upon 1) the transfer of cannabis items from one cannabis establishment to another, 2) receipts of retail sales of cannabis items to individual customers, or 3) the transfer by a concurrent license holder of cannabis items from the license holder's establishment that is located in the municipality to any of the other license holder's establishments. The municipality is free to set its own tax rates, so long as these rates do not exceed two (2) percent of receipts or, in the case of sales by a cannabis wholesaler, one (1) percent of receipts.

3. Next Steps:

At this time, we strongly urge you to take the temperature of the governing body and determine what general direction you want to take with respect to local decisions:

1. Prohibit the sale of cannabis for recreational use to the fullest extent available by law in the form of licensing (this will not prohibit personal recreational use within the municipality); or
2. Permit licensing and sale of recreational cannabis to the fullest extent as permitted by law, or with local restrictions; or
3. Take a hybrid approach by permitting certain licenses, i.e., cultivation, but precluding others, such as retail sale.

In the meantime, we will use our expertise in all of these areas to provide you with appropriate legal guidance based on your direction in the coming weeks. As always, we are available to answer any questions or concerns.

FCS:sdj

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