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Issue 2: The Impact on Local Government Laws and Zoning

With the passage of Issue 2, many local governments are wondering what action must be taken with respect to current laws and policies governing recreational cannabis and what limitations can be placed through legislation, policy, zoning, or other measures. This article explains that many local governments currently have laws prohibiting the possession, use, growth, sale, and cultivation of recreational marijuana. Although governments do not need to fast-track repealing these laws, they cannot be enforced if they conflict with R.C. 3780. Additionally, this article discusses what laws or policies local governments can enforce and enact as they pertain to R.C. 3780.

Issue 2 establishes R.C. 3780 as Ohio law, which legalizes recreational marijuana. The law will be effective Dec. 7, 2023. R.C. 3780 changes Ohio law from only permitting medical marijuana under R.C. 3796 to permitting adult use of recreational cannabis (21 and older). Under R.C. 3780, cannabis may now be commercially sold and cultivated if the selling entity has a valid license. R.C. 3780.12–15. Adults without a license may grow and possess up to six cannabis plants per residence. R.C. 3780.29(A). With that said, R.C. 3780 comes with important limitations and prohibitions that governments should consider when enacting new policies and legislation relating to recreational cannabis. R.C. 3780.36.

Local Laws Governing Marijuana that may be Unenforceable Under R.C. 3780

Existing laws that conflict with R.C. 3780 are unenforceable but do not necessarily need to be immediately repealed. Article 18, Section 3 of the Ohio Constitution gives municipalities the authority to exercise all powers of local self-government and to adopt and enforce, within their limits, local police regulations so long as they are not in direct conflict with general laws. *Westlake v. Mascot Petroleum Co.*, 61 Ohio St.3d 161, 164, 573 N.e.2d 1068 (1991); *Rocky Ridge Development, L.L.C. v. Winters*, 151 Ohio St.3d 39, 2017-Ohio-7678, 85 N.E.3d 717, ¶ 13. General laws are enacted by the General

Assembly to “safeguard the peace, health, morals, and safety, and to protect the property of the people of the state.” *Canton v. State*, 2002–Ohio–2005, 95 Ohio St.3d 149, 766 N.E.2d 963, ¶13. General laws include statutes setting forth police, sanitary or similar regulations. *Id.* at ¶ 15. Like its counterpart, R.C. 3796, which legalized medical marijuana, R.C. 3780 is a general law.

A conflict exists if the ordinance prohibits what a state statute permits. *Rocky Ridge*, at ¶ 13. For example, if an ordinance prohibits possession of recreational marijuana entirely, and R.C. 3780 permits it, there is a conflict. When a city or township attempts to enforce a conflicting ordinance, courts have found the ordinance unenforceable. *Morrison v. Beck Energy Corp.*, 2015–Ohio–485, 143 Ohio St.3d 271, 37 N.E.3d 128, ¶¶ 12, 34–35.

Many local ordinances are currently in conflict with R.C. 3780 because they prohibit forms of possession, use, cultivation, and sale of recreational marijuana that are now permitted under Ohio law. Municipalities, law enforcement agencies, and their legal advisors should work in concert to identify ordinances that can remain as well as legislation that will require amendment or repeal.

What Laws are Enforceable?

Issue 2’s regulation of marijuana is similar to how governments regulate alcohol. R.C. 3780 does not permit just anyone to use, sell, possess, cultivate, or transfer marijuana. Rather, R.C. 3780 provides important parameters that local law enforcement can enforce. Local governments can enact general regulatory laws or policies that coincide with R.C. 3780. Local governments do not necessarily have to enact new laws prohibiting conduct that R.C. 3780.99 already penalizes, but governments may want to consider filling in the gaps where Ohio law is silent with either legislation or internal policy. R.C. 3780.36 and R.C. 3780.99 already set prohibitions and penalties for the following:

- An adult user may not exceed the limits on possession provided in R.C. 3780.36.
- An adult who uses cannabis in public areas is guilty of a misdemeanor.

- An individual under the age of 21 who provides false information to obtain cannabis from a licensed dispensary is guilty of a misdemeanor.
- An individual under 21 who solicits another adult to purchase cannabis on their behalf is guilty of a misdemeanor.
- An employee of a cannabis dispensary who knowingly provides cannabis to an individual under 21 is guilty of a misdemeanor.
- An individual who acts as a cannabis operator without a license is guilty of trafficking drugs and potentially the illegal manufacture of drugs.
- A private individual who violates the limits on transferring marijuana is guilty of trafficking drugs.
- A private individual who transfers cannabis for payment is guilty of illegal dispensing of drug samples.
- A parent or guardian who knowingly permits an invitee that is under the age of 21 to use or possess cannabis within property under the parent or guardian's control can be guilty of either a misdemeanor or felony depending on severity.
- An individual is prohibited from operating a motor vehicle under the influence of cannabis or using cannabis in a motor vehicle.

This is not an all-inclusive list of circumstances that can occur and need regulation. New issues and problems can always arise where Ohio law is silent. Governments may want to consider whether to implement legislation or internal policy in enforcing laws regulating marijuana. Like all new laws, R.C. 3780 is susceptible to being modified by the state. A policy may be more efficient rather than the adoption of local legislation because local legislation could be subject to repeal if Ohio law changes. Governments should consider their own laws and communities in determining whether legislation or policies are the most appropriate route for implementation.

Prohibiting Marijuana Facilities

Governments may prohibit adult use cannabis operators. It will take many months before cannabis operators are legally allowed to

develop recreational marijuana operations or commercially sell cannabis, because the Division of Cannabis Control still needs to be established to implement the licensing requirements. It very well could be the end of 2024 before cannabis operators can sell recreational cannabis in Ohio. However, public entities should begin considering whether they want to prohibit the operation of marijuana facilities altogether.

R.C. 3780.25(A) permits a municipality to prohibit adult use cannabis operators within the municipality. This leaves local governments with the following options:

- Take no action until there is a clearer picture of how the General Assembly and Governor respond to the passage, including any amendments that may be made;
- Adopt a moratorium on recreational marijuana businesses for six months to one year while further legislation and rulemaking occurs; or
- Initiate a process to amend zoning codes, resolutions, and/or ordinances to identify zoning and development standards to permit or condition the establishment of recreational marijuana businesses.

Governments do not need to take immediate action because R.C. 3780's implementation will likely drag into the third quarter of 2024, if not longer, because R.C. 3780 provides for a new Division of Cannabis Control, within the Department of Commerce, to create licensing categories for cultivators, processors, dispensaries, and testing laboratories for adult-use cannabis, with different levels defined by size. R.C. 3780 also requires the Division to set forth requirements for applications for adult-use cannabis operator licenses.

The Division is still waiting for approval of funding to begin this process. Even after the Division receives funds, rules it writes must undergo the Chapter 119 rulemaking process. This process takes approximately 90–105 days, requires a public hearing and public comment, and requires action from the Joint Commission on Agency Rule Review. Accordingly, local governments have some time to decide whether they want to permit marijuana operators in

their jurisdictions. Determining whether a conflict exists between a local regulatory law and Ohio law requires legal examination of the parameters of R.C. 3780. Additionally, the decision of whether to allow recreational marijuana within your community and how to regulate it requires weighing a variety of considerations.

For more information and assistance navigating R.C. 3780, please contact the authors or any attorney with Frost Brown Todd's [Government Services Practice Group](#).

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