



**New York City Cannabis Industry Association**

**And**

**Hudson Valley Cannabis Industry Association**

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**Personal Cultivation, Equity, and Cannabis Markets:  
Creating an Ideal Cannabis Regulatory Structure**

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**Presented by the Joint Committee On Personal Cultivation:**

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## Introduction

An individual's small scale, at-home gardening ("Personal Cultivation") of a reasonable number of cannabis plants for personal consumption, or for any purpose other than sale should be legal in the State of New York. As discussed below, Personal Cultivation will benefit New York State and its citizens in many ways: It helps curb the



unequal enforcement of anti-drug laws against people of color, promotes equity in the cannabis industry, contributes to the immediate generation of sales tax revenues, and creates jobs.

Personal Cultivation's omission from the proposed Cannabis Regulation and Taxation Act (the "CRTA") is at odds with the fact that Personal Cultivation advances the central goals of cannabis legalization by fostering temperance; protecting public health, safety and welfare; displacing the unregulated<sup>1</sup> cannabis market; and, increasing affordable access to a safe and vital medicine. In addition, Personal Cultivation is essential to the promotion of social and economic equality in the cannabis industry.

For those who have concerns about potential harms from Personal Cultivation, there is no evidence that it increases access to or endangers minors, or otherwise leads

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<sup>1</sup> Unregulated Cannabis sales by unlicensed vendors are collectively referred to as the "unregulated market."



to diversion of cannabis products to the unregulated market. Cannabis is not a dangerous or harmful plant, and prohibiting Personal Cultivation will only perpetuate the spread of misinformation and undermine efforts to properly educate the public about safe and responsible cannabis use.

That education begins with breaking down long-perpetuated stigmas about the plant. For example, although many of us were taught that cannabis is dangerous compared to alcohol, in truth, cannabis is far safer than alcohol. Cannabis is less toxic, addictive, harmful to the body, and less likely to contribute to violent or reckless behavior than alcohol. Consider also, for comparison purposes, that home brewing is allowed in all 50 states, and that this does not negatively impact state tax revenue streams by reducing beer sales or cause diversion of home brewed beer into an illicit marketplace. It is only consistent that adults should also be allowed to cultivate cannabis at home, particularly as it is a safer alternative for adult (a.k.a., recreational) use as well as for medicine.

Consider also that from a public safety perspective, statistics prove that opioid induced deaths fall where cannabis is legalized, underscoring why greater access to the cannabis plant as an alternative can enhance public health and safety.<sup>2</sup>

The legalization of equal and affordable access to the cannabis plant for all adults is also an essential component to redressing the injustices caused by the war on drugs. Until such legalization, communities that have been disproportionately targeted by the war on drugs and cannabis prohibition are most likely to bear the brunt of future

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<sup>2</sup> <https://insights.som.yale.edu/insights/can-legalizing-cannabis-curb-deaths-from-opioids#gref>



enforcement of a ban on Personal Cultivation. In order to have an equitable program, New Yorkers should have the right to cultivate cannabis plants in homes, apartments, condos and cooperatives, without fear of criminal prosecution.

Advocates of the Marihuana Regulation and Taxation Act (“MRTA”), the State Legislature’s adult use legalization plan, and the Governor’s CRTA adult use proposal in the budget, recognize that equity at the inception of any legalization measure is the foundation of an inclusive cannabis industry. To achieve this goal, they must appreciate that equity cannot be achieved without equal and affordable access to the plant. Both the MRTA and the CRTA must be improved in this regard. The CRTA has no provision allowing for Personal Cultivation. The MRTA’s allowance of six plants grown solely by Medical Marijuana patients and/or their caregivers is insufficient to ensure that all people can have access to the plant.

Additionally, neither proposal provides protection for New Yorkers living in NYCHA and/or HUD Housing who want to engage in Personal Cultivation either for medical or adult use purposes. The Legislature and Governor should work together to pass equitable regulations allowing all citizens to grow a limited number of cannabis plants at their own homes, apartments, condos, and cooperatives.

This report is respectfully submitted to provide guidance on these key policy issues to help make New York get its new cannabis marketplace right from the start.

## What is Personal Cultivation?

Personal Cultivation is the practice of growing a cannabis plant at home for any purpose provided that it is not offered for sale. People have been growing at home for years, primarily to gain access to the medicine it contains, but in these days of widely available legal cannabis, people still grow cannabis at home for a variety of reasons including: they cannot afford medical marijuana or retail adult-use cannabis, they cannot access a particular



strain,<sup>3</sup> or simply because it may be an educational and fun hobby. Whatever the reason, the factor that differentiates Personal Cultivation from commercial cultivation is whether the cannabis is offered for sale. The unlicensed sale of marijuana, regardless of where or by whom it is grown, is not Personal Cultivation, and such sales are already rightly prohibited under state and federal laws.<sup>4</sup>

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<sup>3</sup> “Strain” means a variety of cannabis. Different strains contain varying levels of the cannabinoids and terpenes in cannabis, resulting in different effects upon the user of the plant.

<sup>4</sup> §125. General prohibitions and restrictions. 1. No person shall cultivate, process, or distribute for sale or sell at wholesale or retail any cannabis, adult use cannabis product, medical cannabis or cannabinoid hemp within the state without obtaining the appropriate registration, license or permit therefor required by this chapter.

## The Living Cannabis Plant

The Rosales order of flowering plants includes many varieties of popular



ornamental garden plants, such as roses, spireas, and hawthorns, as well as economically important food crops such as apples, strawberries, almonds, figs, cherries, mulberries, and thousands of other plants, including Cannabis. Cannabis is in the

Cannabaceae family along with Hops (which also has a grow your own culture),<sup>5</sup> and Hackberry, a popular bonsai species.<sup>6</sup> Cannabis is its own genus, comprised of the species<sup>7</sup> *Cannabis Sativa*, *Cannabis Indica*, and *Cannabis Ruderalis*.

There are several biochemically distinct strains of the Cannabis species, which can be separated into three general categories. Landrace strains are the original types of cannabis - those that evolved naturally within their native environments. Heirloom strains developed by humans transporting landrace seeds to new growing environments,

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<sup>5</sup> [https://www.morebeer.com/articles/growing\\_hop\\_rhizomes](https://www.morebeer.com/articles/growing_hop_rhizomes)

<sup>6</sup> <https://www.bonsaiempire.com/tree-species/celtis>

<sup>7</sup> The number of species within the Cannabis genus and whether *C. Sativa* and *C. Indica* are different subspecies or different species is a matter of some debate. Adding to the confusion is the fact that the common use of the terms “Sativa” and “Indica” in the marketplace is inconsistent with the nomenclature. See McPartland, John M. “Cannabis Systematics at the Levels of Family, Genus, and Species.” *Cannabis and cannabinoid research vol. 3, (2018): 203-212* (“[R]econciling the vernacular and formal nomenclatures: “Sativa” is really *indica*, “Indica” is actually *afghanica*, and “Ruderalis” is usually *sativa*. All three are varieties of one species, *C. sativa* L.”).

and hybrid strains which were developed through cross-breeding of the original heirloom strains. Hybrid strains are the type available in dispensaries today. Different climates formed landrace strains of different appearance and cannabinoid composition-- *Cannabis Sativa* is believed to have developed in Asian, African and South/Central American climates and *Cannabis Indica* in Afghanistan, India and Pakistan, but they are members of the same family and botanically there is very little distinction between them. Moreover, as a result of cross-breeding and hybridization, these distinctions have become blurred and may no longer be indicative of a particular strain's properties.<sup>8</sup>



Other than the amount of Delta-9 Tetrahydrocannabinol (“THC”) there is no difference between Cannabis and Hemp. The living cannabis plant poses no known danger to people, animals, or other plants. Unlike oleander, daffodils, lilies, dieffenbachia (“dumb cane”), and other common houseplants, a cannabis plant is not poisonous or aggressive. It does not spread quickly like bamboo, or reach out and choke its neighbors like cucumbers.

Growing cannabis at home is a lot like growing tomatoes. There is no standard size for a cannabis plant, but a typical cannabis plant grown outdoors stands at roughly 3-6 feet high and is more narrow than it is tall. *Cannabis Sativa* grows a little bit taller with

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<sup>8</sup> *Id.* at 210.

longer, thinner leaves than *Cannabis Indica*. As with tomatoes, some years you get a bumper crop, and other years, groundhogs come around and eat the whole thing.

Cannabis has an outsized reputation, but is in reality a fairly discrete plant and does not in small gardens pose any public nuisance. A noncommercial cannabis garden is unlikely to attract notice from passersby or casual observers. During a short period in late fall, cannabis gardens do give off a floral scent, but it is no stronger than lilac or lavender. An indoor garden of reasonable size would not attract any more notice from outside the home than any other indoor plant.

A typical outdoor cannabis garden occupies roughly the same amount of space as a tomato garden. Cannabis is an “annual,” meaning that it must be replanted year after year. If grown outdoors in New York, a cannabis plant will have one growing season, with harvest in late September or early October.



Indoor plants can be grown in front of a window and treated like any other house plant. If a harvest is desired, cannabis is often grown in small tents to control the light cycles that trigger the plant to produce flowers. A typical tent may contain 4 - 6 plants in 12 inch flowerpots, and indoor plants tend to grow smaller than their outdoor counterparts. Today’s indoor cannabis gardens are much different than they were in the past. The LED lights commonly used today require far less energy and emit very little heat compared to the high intensity grow lamps used in the past. LEDs are plugged into standard 120v outlets with no special installation required, and on average use 50-75% less electricity

than high intensity lights. This technology in turn alleviates the need for HVAC systems to combat the heat emitted from older grow lamps. Today's cannabis garden is much safer. Still, just like outdoor gardens, cannabis grown inside is also susceptible to a wide



range of variables. Thus, a good harvest is neither guaranteed, nor easy to achieve.

Overall, cannabis is a relatively low-profile garden plant that does not cause a nuisance when the number of plants is small.

## Harvesting Cannabis

While growing cannabis is much like growing tomatoes or other garden vegetables, the harvesting process is much more involved. Tomatoes are visibly ripe and delicious when they are ready, but cannabis looks pretty much the same to the untrained eye from under-ripe to over-ripe. It must be carefully watched until the trichomes become cloudy and amber colored, then harvested without delay. In New York, this happens in early October, and the weather conditions are touch and go – a cold and rainy day or two in the beginning of October can mean the cannabis grower gets no harvest at all.



After a plant is harvested, the cannabis is typically trimmed, which is the most labor-intensive part of producing usable cannabis flowers. In the trimming process, the non-flowering parts of the cannabis plant are separated from the flowers so that the flowers can be hung up, intact, to dry. Once dried, the flowers are placed in jars and left to cure for several weeks. After this process, the grower has usable cannabis. A jar of properly dried and cured cannabis will remain fresh for roughly six months.

“Hemp” means cannabis containing less than 0.03 % THC, while “Marijuana” most often indicates the dried flower of the cannabis plant that includes THC above that threshold amount. It is challenging to grow pharmaceutical-grade marijuana in a commercial setting, and nearly impossible to do so at home. Most amateur growers will not be able to produce high potency marijuana at all, and are unlikely to realize substantial yields from twelve or fewer plants.

To harvest, trim, dry and cure is labor intensive, so much so that people who simply wish to obtain marijuana or other cannabis products for responsible adult use are unlikely to grow it at home.

With widely available legal cannabis, the variety and quality of product from a dispensary is more abundant and reliable than trying to produce at home. Personal



Cultivation will therefore largely be practiced by hobbyists. Just as people with vegetable gardens still buy vegetables at the grocery store, most people who grow cannabis will still regularly shop at a dispensary; particularly when cannabis is covered by health insurance.

## Social, Economic and Tax Benefits to Legalizing Personal Cultivation

While Personal Cultivation will likely be a niche activity, it will confer outsized benefits that will be felt across the State. Legalizing personal cultivation of Cannabis will benefit New York's economy by creating jobs in sectors of the economy that will service and provide supplies to home growers.

Growing cannabis is a hobby in which people are willing to invest considerable amounts of money to participate. In order to produce even small amounts of quality cannabis flower indoors, a grower must carefully monitor and control the plant's environment to maintain ideal conditions. This can be challenging, especially for beginners, and often requires the use of grow lights, temperature and humidity controls, nutrients, special growing mediums, and other various horticulture tools all of which may be purchased locally at a hydroponic shop.

Hydroponic stores are quickly becoming a highly lucrative industry that is predicted to grow exponentially creating tax revenues for both municipalities and the State.<sup>9</sup>

Denver-based GrowGeneration, the largest chain of Hydroponic Stores in the U.S., reported \$55 million in revenue for the quarter ending September 30, 2020, a 150%

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<sup>9</sup> See *Hydroponic Growing Equipment Stores in the US industry trends (2014-2019)*, IBIS World Market Research Report, updated November 15, 2019. Available at: <https://www.ibisworld.com/united-states/market-research-reports/hydroponic-growing-equipment-stores-industry/>



increase over the same period the year before. In anticipation of the increased demand for hydroponic products, GrowGeneration is opening new stores and expanding into new markets because it anticipates increased demand for hydroponic products. Nationwide, the number of people employed in the hydroponic store industry increased 4.2% on average between 2016 and 2021.<sup>10</sup>

## An Equitable Cannabis Industry

For most New Yorkers, the primary economic opportunity arising from legalized cannabis is the prospect of employment at a dispensary or with a corporate cannabis company. Cannabis will bring good, long term jobs with fair pay, benefits and stability – and there will be fierce competition to land a spot in the industry. The first movers in the regulated cannabis industry in New York will have a durable lead.<sup>11</sup> Neighboring states will have experienced workers in the cannabis industry before the first dispensaries open in New York. New Jersey - right across the river from New York City, widely recognized as the largest cannabis market in the world, recently passed its implementing legislation. Job opportunities are already popping up on LinkedIn. When New York finally does pass adult use legislation, New Jersey residents with experience at dispensaries on our borders will be in position to pour into our state and compete for those jobs.

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<sup>10</sup> Hydroponic Growing Equipment Stores in the US - Employment Statistics 2005–2025, IBIS World Industry Statistics Report, Updated: November 15, 2019. Available at: <https://www.ibisworld.com/industry-statistics/employment/hydroponic-growing-equipment-stores-united-states/>

<sup>11</sup> <https://www.investopedia.com/terms/f/firstmover.asp>



Personal cultivation is an excellent training ground for employment in the cannabis industry. Similar to the microbrewery industry, ninety percent (90%) of the brewers who work in micro-breweries first learned how to brew at home.<sup>12</sup> Personal Cultivation will provide a fundamental training ground for employment at a dispensary or cultivation facility.

The first priority of Governor Cuomo's proposed cannabis and social equity fund in the 30 day amendments to the CRTA is job placement and skills services.<sup>13</sup> Personal Cultivation is an excellent complement to this proposal, as it allows hands-on skill-building that will subsequently help New Yorkers obtain jobs.

Legalizing Personal Cultivation is a meaningful way to provide access to cannabis to medical patients and members of disadvantaged socio-economic communities who cannot afford the products sold at dispensaries, or have no access to a dispensary due to distance or, say, a pandemic. For medical marijuana patients, growing at home can dramatically cut the cost of obtaining medicine. With medical expenses and/or a reduced ability to work in many cases, out of pocket dispensary prices may be too high. Providing an alternative where patients grow their own plants means allowing access to medicine to those who need it but may not be able afford it, at no added cost to the health care system. Personal Cultivation also ensures that a patient has access to their preferred and/or most efficacious strain for their treatment.

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<sup>12</sup><https://www.forbes.com/sites/taranurin/2016/09/23/its-official-homebrewing-is-on-the-decline-and-heres-why-you-may-be-to-blame/?sh=1ee1908e51fd>

<sup>13</sup> <https://www.governor.ny.gov/news/governor-cuomo-announces-30-day-amendments-legislation-establishing-comprehensive-adult-use>



Without Personal Cultivation, individuals who are unable to afford or access commercial cannabis products may also turn to the unregulated market, or worse, to opioids and synthetic cannabis products as a more affordable alternative.<sup>14</sup> However, synthetic cannabis can be toxic, and there have been reports of users suffering rapid heart rate, vomiting, agitation, hallucinations, severe bleeding, and even death.<sup>15</sup>

Personal Cultivation will help curb these problems by providing a safe and legal alternative to the unregulated legacy market as a source of more affordable cannabis. Thus, especially where localities have the option to ban adult-use and/or medical marijuana sales, Personal Cultivation will facilitate the State's objective to eliminate the unlicensed and untaxed sales of cannabis, decrease the market demand for synthetic cannabis products, as well as provide alternatives for opioid treatment.

## Personal Cultivation Reduces Unequal Criminal Justice Enforcement

Data shows people of color are arrested far more frequently for cultivating cannabis. In fact, the numbers are astonishing at 2.5 times more frequency.<sup>16</sup> "In a free society, adults should not be jailed for growing a handful of cannabis plants. Especially during this time of reckoning about racial justice and policing, we should be reducing unnecessary police-civilian interactions and police intrusions into private homes."<sup>17</sup>

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<sup>14</sup> <https://www.cdc.gov/nceh/hsb/chemicals/sc/About.html>

<sup>15</sup> Id.; see also <https://www.cdc.gov/nceh/hsb/chemicals/sc/default.html> (citing 2018 CDC Clinical Action Messages, including "April 5: Outbreak Alert: Potential Life-Threatening Vitamin K-Dependent Antagonist Coagulopathy Associated With Synthetic Cannabinoids Use).

<sup>16</sup> <https://www.drugpolicyfacts.org/node/3973>

<sup>17</sup> <https://www.mpp.org/issues/legalization/the-case-for-allowing-home-cultivation/>



Prohibiting Personal Cultivation as a means of prohibiting unlicensed sales is ineffective. Arrest data shows that people are much more likely to be caught for illegally selling cannabis than they are for growing cannabis. In 2017, the DEA arrested 60 people and destroyed 4,500 cannabis plants in New York in the entire year.<sup>18</sup> By contrast, roughly 2,000 people per year are convicted of Criminal Sale of Marijuana in the Fourth Degree in the state.<sup>19</sup>

We cannot repair our nation's sordid history of racism and oppression, if we continue to allow laws that disproportionately harm people of color to remain on the books.

### Personal Cultivation Is Safer When It is Legal and Regulated

With Personal Cultivation legalized, people who grow cannabis will have access to resources that will help ensure that they do so safely. Clandestine grows increase the risk to public health and safety. Prohibition has driven grow operations underground. Amateurs install humidity and watering systems, powerful grow lights, high voltage plugs, electrical ballasts, and other advanced electrical equipment in secret. In fact, an electrician asked to ensure that such equipment is or was installed safely places his or her license at risk if he or she fails to report it. Legalization would vastly reduce risks of fires or electrical problems arising from indoor personal cultivation. It would also provide more work for skilled electricians and other grow systems experts.

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<sup>18</sup> <https://www.lohud.com/story/news/crime/2019/03/04/new-york-marijuana-what-know-black-market-pot-illegal-grows-dea-pot-in-mail/3002373002/>

<sup>19</sup> [http://66.109.34.102/docs/PDFs/NYSDA\\_in\\_the\\_Courts/05\\_GrantAmicusBrief.pdf](http://66.109.34.102/docs/PDFs/NYSDA_in_the_Courts/05_GrantAmicusBrief.pdf)



Personal Cultivation will help promote and normalize best practices and performance improving technologies for cannabis gardens. Personal Cultivation will also decrease incidents of trespass and cultivation on public lands, which will in turn decrease the environmental harms caused by these underground cultivators.<sup>20</sup> However, if Personal Cultivation is banned, then best practices will not become widely adopted and some are likely to continue growing in secret with less safety and energy efficiency measures.

### Personal Cultivation Fosters Temperance

Garden variety cannabis generally has lower levels of THC than cannabis purchased at a dispensary. Professionally cultivated cannabis is far more potent today than in years past. Highly controlled environments with chemical nutrients and intense artificial light have driven the amount of THC in the cannabis available at retail to levels never seen before. While there is no evidence that anyone has ever died from a cannabis overdose, anecdotal reports of unpleasant experiences from novice users suggest that the extraordinary levels of THC in professionally cultivated cannabis are not for everyone. The CRTA recognizes this, calling for temperance as one of the driving principles of legalization. Garden variety cannabis is much less potent. Allowing Personal Cultivation

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<sup>20</sup> See, e.g., Prestemon, J.P., Koch, F.H., Donovan, G.H. & Lihou, M.T. (2019). Cannabis legalization by states reduces illegal growing on US national forests. *Ecol. Econ.*, 164, 106366; and Klassen, M. & Anthony, B.P. (2019). The effects of recreational cannabis legalization on forest management and conservation efforts in U.S. national forests in the Pacific Northwest. *Ecol. Econ.*, 162, 39–48.



will result in cannabis with lower levels of THC, and therefore more temperate use of the psychoactive properties of the cannabis plant.

Additionally, Personal Cultivation is a labor of love for the cannabis plant. People spend hours learning and studying the plant, and have deep understanding and respect for the powerful medicine it contains. Growers develop a connection with the plant that is akin to a farmer and the land, and develop a relationship that fosters temperance and care when using the medicine.

## How to Do it the Right Way

Legalizing personal cultivation must be approached in a thoughtful and sensitive manner. Landlords have concerns about the effect on their businesses, and the police have questions about enforcement. Municipalities are likely to have widely divergent views about how to approach this new law. Personal Cultivation of cannabis has significant benefits and its allowance will remove much of the unregulated Personal Cultivation that may have unintended effects such as safety concerns to name one. Personal Cultivation should be implemented with sensible regulations to ensure that it works for all New Yorkers.

## Unregulated Sales Remain Illegal

Unregulated sales of cannabis are already and will continue to be prohibited under 221.35 of the Penal Code. Individuals found to be trafficking in unlicensed cannabis, operating underground cannabis farms, or otherwise evading the regulatory structure for

the sale of cannabis in New York will still be prosecuted according to the law. Personal Cultivation, by definition, does not include the unregulated sale of cannabis. Both the MRTA and the CRTA include provisions that explicitly prohibit the unlicensed sale of cannabis.

Effective methods of regulating the sale of cannabis, without prohibiting Personal Cultivation, are time-tested and readily available. Tax Stamps have been used for decades to control the sale of tobacco and alcohol, to great effect. Unlicensed sales of tobacco make up a tiny fraction of the tobacco market. And although home brewing of beer is legal in New York, and the unlicensed sale of beer is unlawful in New York, the

unlicensed sale of home brewed beer is rare. In the presence of a healthy and regulated market, consumers purchase their beer from regulated sources, and there is no reason to believe that cannabis consumers will not follow this pattern.



A permitting process, like for fishing or hunting, could be used to track compliance with regulations. The registration number of the grower should be required on all cannabis leaving the premises.



## Limit the Number of Plants

States with a reasonable restriction on the number of plants that can be legally grown for personal consumption have not experienced a significant expansion of unregulated sales of cannabis. Colorado started off with a personal cultivation limit of 99 plants, which proved to be excessive and led to unlicensed cannabis production and sales. Massachusetts, which allows 12 plants per household, has a thriving commercial cannabis industry and dwindling unregulated market sales. Colorado has since restricted the number of plants, and now the regulated market is thriving.

Landlords can further restrict the number of plants grown by their tenants based on the space available, provided that such restrictions do not effectively prohibit Personal Cultivation entirely. Tenants are prohibited from using their apartments for unlawful purposes as well as behavior that infringes on the quiet enjoyment of other tenants in the building. Likewise, tenants cannot install dangerous electrical equipment or make alterations to the property without the landlord's consent, and it is perfectly reasonable for a landlord to determine that 12 potted plants of any type is too many for a small apartment.

Similarly, municipalities have zoning laws to protect the interests of its residents. Municipalities should be empowered to enforce zoning restrictions and further reasonable limitations on the number of plants, provided that the measures are not interpreted or enforced so that they effectively prohibit Personal Cultivation entirely.

12 mature plants per household is too small to become an underground cannabis retailer or undermine the regulated market, but is large enough to maintain a variety of



cultivars, account for periodic plant losses and other vagaries of gardening, while ensuring a sufficient supply for personal use by the gardener.

### Criticisms of Personal Cultivation are Misinformed

Other states that have legalized adult-use cannabis have taken divergent paths regarding Personal Cultivation. Colorado and Washington legalized adult-use cannabis in the same year; Colorado permitted Personal Cultivation while Washington did not. Since 2017, Colorado has experienced a growth rate in its cannabis industry that is 10% higher than Washington. Similarly, Oregon, which legalized adult use and Personal Cultivation in October of 2016, has experienced higher growth rates than Washington.<sup>21</sup> Personal Cultivation for at least medical patients was included in both the MRTA and CRTA until last year. The MRTA still includes it. Multiple states have found that reasonable limitations on the number of plants serves to prevent illegal sales of cannabis.

Furthermore, Personal Cultivation does not take business away from regulated cannabis retailers or lead to diversion to the unregulated market. Most people do not have the time, desire, skill, and/or resources needed to successfully grow quality cannabis as a hobby, and those that do are enthusiasts and still highly likely to continue purchasing cannabis products from other sources. The variety of cannabis products available at a dispensary, in addition to flower, cannot be replicated by home gardeners. In the nine states that have already legalized tax-free Personal Cultivation, and more contemplating

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<sup>21</sup>[http://ses.wsu.edu/impact-center/wp-content/uploads/sites/2/2021/01/WA\\_Cannabis\\_Final\\_v2.pdf](http://ses.wsu.edu/impact-center/wp-content/uploads/sites/2/2021/01/WA_Cannabis_Final_v2.pdf)



it, permitting individuals to grow a limited number of cannabis plants for private use has not had any demonstrable negative effects on the tax revenue generated by the legal retail market.

Homebrewing again provides a useful analogy. Specifically, since homebrewing became legal in New York, the craft brewing industry has expanded across the state. Likewise, Personal Cultivation is a hobby that generates interest in the craft and culture of cannabis, and will only serve to support and enhance this new industry.

## Educating the Public is Essential

Public education and incentivizing safe practices are critical to public health and safety. Massachusetts, for example, has instituted a public awareness program on Personal Cultivation limitations and safety measures for cultivation and extraction.<sup>22</sup> Safety campaigns should consider cannabis in all its forms, including raw plant material, products (concentrates, edibles, joints), and waste. Safe practices should include the use of high-efficiency equipment, proper and safe set ups and installations of cultivation equipment, secure storage, least-risky means of processing, appropriate packaging and labelling, and appropriate disposal.

One means to encourage these practices, such as is advocated in Canada, is through the promotion or marketing of “cannabis safety kits” targeted toward Personal Cultivators, particularly those in homes with children. Kits could exist as checklists created

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<sup>22</sup> <https://moreaboutmj.org/marijuana-safety/growing-marijuana-making-marijuana-products-at-home/>



by public health agencies, physical kits sold or subsidized by public health agencies, or commercial products developed in partnership with the cannabis industry. “Cannabis safety kits” might contain stickers with a standardized cannabis symbol, child-resistant bags or lock-boxes, locks to install on cupboards plus energy efficient guidelines/requirements for electrical equipment.

Preventing the unauthorized use of cannabis by those under the age of 21 is essential, but personal cultivation does not pose a threat to minors. Cannabis plants themselves do not have any psychoactive effects, and neither the plant nor cannabis flower is poisonous or harmful when ingested in its pure form. Marijuana use, both intentional and unintentional, is highly unlikely to cause any severe health consequences, let alone death, even in children. Although marijuana affects each individual differently, those who have a negative reaction experience only temporary unwanted side effects, most frequently reported to include drowsiness, rapid heart rate, and irritability. Unlike alcohol, cleaning products, prescription medications, and other toxins frequently found in homes that children or pets could potentially gain access to, there is no record of anyone having ever died as a result of marijuana consumption.

Timely and targeted public education about cannabis, personal cultivation, and the known benefits and risks of marijuana use, is critical to shaping safe cannabis culture and eliminating problems before they occur. In addition, such education equally applies to certain long-standing environmental and public health issues that are not unique to cannabis, including humidity and indoor mold; the dangers of CO; safe use of pesticides,



particularly indoors; and, indoor air quality more generally. Given these key policy considerations, public education will remain the most important tool to prevent and mitigate environmental health risks to home growers.<sup>23</sup>

Private landlords can also have the discretion to make additional accommodations in their lease agreements, by-laws, and or covenants for both medical marijuana patients and non-medical marijuana patients for Personal Cultivation.

## Personal Cultivation is Consistent With Federal Enforcement Guidelines

As of this writing, non-hemp cannabis with a THC content greater than .03% is listed on Schedule 1 of the Controlled Substances Act of 1970 (CSA). This means that any quantity of cannabis, whether grown at home or not, in any stage – from cultivation to possession – is federally unlawful. State laws, including the New York State Compassionate Care Act (which legalized medical marijuana in New York), as well as the cannabis legalization laws of dozens of other states, are in conflict with federal law. However, federal enforcement of the CSA against individuals and businesses otherwise complying with state law, has been circumscribed to a great extent by federal policy and legislative measures.

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<sup>23</sup> March 2018 Growing at Home: Health and Safety Concerns for Personal Cultivation by National Collaborating Center for Environmental Health (Canada), available at: [https://www.nccch.ca/sites/default/files/Growing\\_At\\_Home\\_Health\\_Safety\\_Personal\\_Cannabis\\_Cultivation\\_Mar\\_2018.pdf](https://www.nccch.ca/sites/default/files/Growing_At_Home_Health_Safety_Personal_Cannabis_Cultivation_Mar_2018.pdf)



In August of 2013, Deputy Attorney General James M. Cole, issued a memorandum (the “Cole Memo”). The Cole Memo provided guidance for all U.S. Attorneys nationwide to, among other things, refrain from prosecuting persons and companies who are in compliance with state cannabis laws, but nonetheless in violation of federal cannabis law, provided they were compliant with the guidelines enumerated in the Memo.

Because U.S. Attorneys typically have far more serious matters on their dockets, the Cole Memo had the effect of liberating state legal cannabis businesses from the threat of imminent federal raids and prosecutions. The Cole Memo was rescinded in January 2018 under Attorney General Jeff Sessions of the Trump administration. Despite that policy rescission, U.S. Attorneys, even though no longer guided by the Cole Memo, did not reinvigorate enforcement of federal cannabis law, provided that operators and consumers were compliant with their state laws.

Since the beginning of the Biden administration, there has been no formal re-invocation of the Cole Memo or administrative actions to address the fact that many state cannabis legalization programs remain in conflict with federal law. There is significant momentum in Congress for reconsideration of such measures as the SAFE, MORE and STATES Acts.

None of the recommendations here on Personal Cultivation conflict with either the letter or the spirit of the guidance offered by the Cole Memo or with federal policy since its issuance.



The key federal policies articulated in the Cole Memo are listed below, together with confirmation as to why New York will be in compliance with these policies:

- No distribution to minors
  - No increased exposure to minors has been reported by any state where home grown cannabis has become legal. New York should implement reasonable regulations to insure this is also the case here. These regulations should include:
    - No outdoor cannabis obviously visible from public viewing areas with the unaided eye (sidewalks, roadways, etc.)
    - No cannabis should be grown near day care facilities or visible or otherwise detectable while on school grounds.
- No diversion of revenue to criminal enterprises.
  - There is no “revenue” involved with Personal Cultivation. The instant money is exchanged for cannabis, outside of a state licensed dispensary, that activity becomes unlawful and is out of the scope of Personal Cultivation for hobbyists or patients.
  - There is little or no temptation for a home grower to engage in this crime, nor for a criminal enterprise to initiate such engagement. This is because:

- Personal Cultivation for non-medical purposes is a hobby and thus highly fragmented and very small (limited to a handful of plants). There is no economic incentive for criminal activity to get traction.
- Costs associated with raising the cannabis plants will, in all likelihood, exceed what could be commanded in the informal market for Personally Cultivated cannabis. Home growers engage in this activity for the love of it, and not for the money.
- Diversion across state lines
  - There is no incentive for diverting home-grown cannabis across state lines. Restrictions on the number of plants allowed eliminates any financial incentive for diverting legally, home-grown cannabis across state lines for sale.
- Cannabis as cover for other illegal drugs
  - Other illegal drugs (heroin, cocaine, opioids) are a completely separate issue from home grown cannabis.
    - Since gardening is, in fact, a healthy activity, one could argue convincingly that Personal Cultivation could act as a deterrent of unhealthy activities such as consuming illegal drugs.
    - Some drug treatment centers (in California) have reported success in treating patients' drug habits by substituting safe cannabis.
- Use of firearms



- Firearms are a controversial issue in our society, but there is no connection between firearms and legalizing Personal Cultivation.
- Drugged driving
  - Here again, New York can turn to the experience of other legal states, which have experienced no increase in traffic fatalities exclusively related to cannabis intoxication. Personal cultivation will not contribute to driving under the influence any more than adult-use sales.
  - Personal Cultivation, in fact, is a home hobby and arguably tends to keep people off the roadways.
- Illegal use of public lands and environmental damage
  - If New York legalizes Personal Cultivation, the grower is no longer breaking the law by growing at home. This reduces the incentive they might have otherwise had to furtively grow cannabis on public lands.
  - Illegal use of public lands and environmental damage is caused by law breakers (typically growing to supply the informal market) and not by legal cannabis home-growers. Making cannabis conveniently available to adults in New York, via both licensed dispensaries and via Personal Cultivation, reduces the incentive for criminal activity, including improper use of public lands.



## Conclusion

Personal Cultivation is an essential part of a healthy cannabis industry. We should follow the examples of Colorado, Massachusetts, Michigan and other states, which have legalized Personal Cultivation without complications, and have seen their cannabis industry thrive despite those permitted to grow at home.

Personal Cultivation is a niche activity that will be little-noticed by most New Yorkers. Its positive impacts include a stronger and more equitable cannabis industry, better access to medicine and ancillary jobs and tax revenue generation. Personal Cultivation is a safe and beneficial practice, and ending prohibition is the best way forward.

On these bases, the New York City Cannabis Industry Association and the Hudson Valley Cannabis Industry Association believe it is essential for New York to include Personal Cultivation in its adult use legalization law.