

## Previte says law 'raises more questions than answers'

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law, except under a valid court order. "Second, once the law becomes effective, possession outside the home of up to 3 ounces of cannabis flower and 24 grams of cannabis concentrate will be immediately legal. An adult over the age of 21 would be allowed to possess up to 5 pounds of cannabis in their home, but take 'reasonable steps' to secure it from access by people under age of 21.

"Third, police cannot use the odor of cannabis to justify a search of areas of a vehicle not 'readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.' Finally, while driving under the influence of cannabis remains illegal, there are no currently approved standards or scientific tests to quantify the cannabis impairment. ...

"The Marihuana Regulation and Taxation Act presents a significant change in municipal, employment, criminal and several other areas of law."

Town of Lewiston Chief of Police Frank Previte could not agree more. He said the new measure that took effect April 1 presents a number of challenges to officers as to its enforcement. The law allows for the aforementioned individual carry and use of up to 3 ounces in public in the same sense as cigarette smoking is permitted in designated areas on public property. This includes such areas as the sidewalks of streets in localities, in Academy Park, in public access areas such as the Lewiston Landing or in picnic areas alongside the Silo Restaurant on Water Street. Marijuana possession/use is even permitted in designated cigarette smoking areas in private establishments such as bars and restaurants. In the future, it will be allowed for retail sale in state-authorized establishments in communities, a provision expected to take effect within 18 to 24 months.

The act does allow municipalities the opportunity to "opt out" of the allowing of cannabis sales or actual consumption locations (sidewalks, parks, picnicking areas, etc.) within their respective communities by Dec. 31, or nine months following enact-

ment of the state law. Accomplished via passage of a local law, it would allow for municipalities to control retail activity. However, it does not impose restrictions on an individual's recreational use nor does it impact home growing of cannabis.

Further, should municipalities elect to "opt out" of allowing retail sales of pot, they would face the loss of local revenues, based on sales taxes of 9%, and a "potency tax" shared between the state, the county and municipalities developed from the THC content of cannabis sales. This could translate into a potential loss of 75% in local sales taxes from cannabis sales.

As the law is only days old and very fresh on the books, municipal leaders have yet to take a stand on the measure.

Town of Lewiston Supervisor Steve Broderick, a retired lieutenant from the Niagara County Sheriff's Office said the town is taking a wait-and-see approach.

"The legislation just got passed; there are too many unknowns. There are so many variables we just don't have any answers (at this time); it's kind of a wait-and-see," he said.

Broderick said he intends to meet with municipal officials from throughout the county to share their views and determine what response, if any, Lewiston would take on permitting local retail sales of pot. He likened the new marijuana law and its potential impact locally to earlier government measures that saw the drinking age go from 18 to 21, or raising the permitted federal highway speed limits to 65 mph from 55 mph.

As to the now-permitted use of marijuana in public places, Broderick said he remains baffled at the thought: "Just think: Right now you or I can use or possess" marijuana on the street. Doesn't make any sense." As far as a possible response from the town, he said he expects the issue would be looked at. "We'll get with our attorney, (other) supervisors and make an educated decision."

For law enforcement, what stands out is that marijuana possession and use remains illegal on the federal level, with violators facing potential

arrest and prosecution. Drivers who transport it across the Lewiston Queenston Bridge, to or from Canada for example, remain susceptible to arrest. But those who carry and/or use it on a Center Street sidewalk, in a park or in a designated smoking area in a private business establishment, would not be subject to arrest.

The measure presents a difficult predicament to law enforcement – particularly so for federal officers such as U.S. Customs and Border Patrol, Immigration and Customs Enforcement personnel, even U.S. Coast Guard officers who, at times, patrol area roadways or on the water.

Previte went on to discuss a variety of potential areas of concern the new law places on Lewiston's road patrol officers when it comes to vehicle/traffic enforcement.

Just how would an officer respond? "That will be on the officer's training and experience, and the experience they receive as far as being able to detect (marijuana) impairment (via field/sobriety testing, the driver's performance/response and the officer's determination), which is the same (as alcohol)," he said. "The basic tests are a little different. So they will have that tool.

"And what we will have to do instead, we have drug recognition experts that are trained to detect. So that will be the way; that's kind of how we do it now. In some cases, we would request drug or urine tests, but for the immediate (roadside testing) we would do that with the drug recognition expert. It starts with field sobriety testing and then the DRE would be contacted."

Previte said field-testing of a driver suspected of marijuana intoxication would be very similar to patrol's handling of a suspected DWI pullover.

"It kind of mirrors exactly what would happen with alcohol, the same type of procedures as far as field testing," he said. "The only difference with an intoxicated person (from alcohol) is we would take them to a breath-testing instrument to get a percentage (for blood-alcohol content).

"If it was marijuana or any type of drug, we would take them to the DRE

person who would evaluate them and be able to tell us, 'Yes, I believe they are under the influence of that or some narcotic.'"

So just how would an officer determine a driver's level of intoxication from marijuana? Is there – or will there be – a state standard similar to determining the blood-alcohol content?

"That's a good question," Previte said. "In my personal opinion, just like everything else, the state made a law change, and provided nothing (to work on). It's just a free-for-all. That's kind of what's happening right now. ...

"The other part that is funny to me as a chief in law enforcement is, as of right now, today, right now in New York state, it is still at this point illegal to buy it or sell it, because the state obviously has to put things in place for what they are going to do for that.

"But it's not illegal to possess it. It's (currently) illegal to grow it, too, but it's not illegal to possess it. So how you got it, I don't know – maybe it fell from the sky?"

"Possession is legal. What's changed is, the biggest change, the way it stands right now, the law says you can smoke marijuana pretty much anywhere you can legally smoke cigarettes. There are some exceptions to that, caveats in the law. But it's pretty much what has changed."

As to state procedures governing enforcement, arrests, prosecution and fines of marijuana violations, Previte said the matter is far from settled.

"According to the law, 'Individuals who are under 21 are not permitted to possess marijuana, even in small amounts, anything. However, (under) the current state law, there is nothing to change them with,' he said. "They're juveniles anyway. There is no mechanism for that. But anyone under 21 cannot possess it at all."

For law enforcement, the law also says "for individuals under age 20 who are smoking where it is not allowed, it is not a reason to approach them," Previte said. "The state is saying they just want it legal and forget about it. The law also prohibits us for doing things like searching a vehicle

based on smell. Unless you can articulate.

"The difference with that now, if I pull (you) over and smell marijuana in (your) vehicle, it's no longer a basis for me to search. However, if IT is a small of recently burned marijuana, it is still illegal to drive under the influence.

"So on a pullover where a marijuana smell is detected, the officer has to ask himself what kind of smell, what kind of pot. Are you smelling unburned weed, which is legal? Are you smelling burned weed in a vehicle, which is illegal? That's what the difference is.

"The way I look at it is this: I pull (you) over, (you) got a case of beer in your car, is that illegal? I pull (you) over, (you) got a case of beer in your car, (you) have a smell of alcohol and an open beer in the car. Now I have a reason (to charge).

"I pull you over, you have 2 ounces of weed and the car reeks like weed. Can I search? No. I pull you over it smells like you just smoked marijuana in the vehicle. You're operating the vehicle, now you can charge.

"It would be based on the performance of the driver in this case. The performance of the driver is your reason for the stop. That could be based on anything. But to have probable cause to search a vehicle or to look. It's no longer the smell; it's got to be (evident). You have to have reason to believe the person was smoking in the vehicle while they're operating."

Previte closed by expressing frustration, saying the 128-page new state law presents more questions than answers.

"It's just how it goes (with this state)," he said. "I just got out of police reform and now it's into this. It's just one thing after another.

"You talk about reform? The governor has been in a state of reform for the past one to 15 years. It's like all that we do now. We're constantly in a state of reform. We went through raise the age, we went through police reform, we went through this, the weed reform, we did bail reform. I'm reformed out of my ears."

"How much more?" he asked.

## Asphalt: 'If the other 11 are allowed to operate, why can't we?'

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"We have been working on this issue over the past few weeks, and we have had numerous discussions with our elected officials at the local, state, and federal levels," he wrote. "We have also collaborated with our community partners to identify ways to advance our collective position against this project, and have been guided by outside counsel to develop our legal strategy with regard to concerns inherent in the approval process and the expected environmental impact of the asphalt plant. I express my appreciation to members of the faculty and Niagara students who are working together on these environmental and social justice issues, and learning about the advocacy and research that is needed in our community."

A Facebook group called Niagara Residents Against the Asphalt Plant, which has been one of the most vocal outlets for resident concerns and frustrations surrounding the proposed facility, released a similar statement immediately following the meeting.

"(The Facebook group) is pleased with the decision of the Town of Niagara Board's decision to unanimously rescind the previously approved application ... (and) for listening to the voices of over 2,500 concerned citizens."

Still, the group vowed to, "Keep its pulse on this issue for the greater good of our community. Our mission from the onset was to bring awareness to the project, and to demand transparency from our local government."

Paul Kudela, a Niagara Falls resident who spearheaded the organization efforts against the facility, on

Thursday said the efforts were simply a first step.

"We succeeded in our first step to bring awareness to the project. We can do a victory lap, but this is not over," he said. "The second step is to make sure this process is transparent and following the policies, procedures and laws that are in place to protect against projects like this happening without any sort of public input. Now that it's in the hands of the county, we hope that they'll take the public's input about where this proposed site is supposed to be and use that in their decision making."

As the asphalt project heads toward Niagara County and the DEC mulls approving the company's supplied studies and evidence, there is still a very real possibility the facility can be approved and opened.

Kudela said that, as long as the approval process is conducted in a more transparent way than it had been previously, and as long as resident concerns were heard and taken into account, should the overseeing agencies determine the project safe for the general public, he personally could live with that outcome.

"If it's being done in a transparent way, and is taking input from the public, me personally, I'm willing to accept what the outcome is, as long as it's taking all factors into account," Kudela said.

However, he still questioned as to how the SEQR process could potentially find no issue with the facility as it borders three municipalities and Niagara University. He is still unhappy an opportunity wasn't made previously to comment on the proposed location.

"I'm willing to accept the findings of the SEQR; I'll accept if the county and the town's planning boards have no issue. But I won't accept the fact due diligence wasn't done earlier on behalf of the residents and the children of this community," Kudela said.

DiPizio said she "appreciates and respects" Kudela's position. However, for the company's part, she feels it has personally done everything to be transparent during the processes with the Town of Niagara, and studies it has provided should prove the plant operates within environmental regulations.

"I am happy to hear that he wants to hear the facts ... if this delay means more people can ask questions and get their answers, so be it," DiPizio said. "But I think if they read all of those (publicly available documents) they would come to the same conclusion that the Town of Niagara came to last year, and the NYS DEC came to this year. And that will be that it should get a negative declaration. Nothing has changed, so the same outcomes should be the same. ...

"I am hearing public outcry, but it's not factual. I have not seen facts to support the outcry positions. We have provided supported evidence. They're publicly available through the town. We have nothing to hide. 4660 Witmer Rd. LLC wants to put up an asphalt plant and put it up prudently with respect for the environment and respect for the neighbors, and so that it operates within DEC required thresholds. We're not looking to do anything that would hurt anybody. And if anyone wants to see how an asphalt plant works, there are 11 of them up in WNY. They're all over the place.

... This asphalt plant would not operate any different than those other 11.

"So I ask again, if the other 11 are allowed to operate, why can't we?"

The next Town Board meeting will take place via Zoom at 6:30 p.m. April 20. The meeting will feature two public hearings. The first concerns

a proposed local law regarding the regulation of small cellular wireless facilities in the town with action to be taken on May 7.

The second is in relation to local law change that would remove the residency requirement for the deputy superintendent of highways.

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