

Cannabis Consumption Lounges: Proposed Regulations Released

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This article explores the proposed legislative framework to operate a consumption lounge in the state, and sets forth some of the anticipated, potential issues that may arise as these lounges become operational.

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On Jan. 17, the New Jersey Cannabis Regulatory Commission (the CRC) released its proposed regulations for “cannabis consumption areas,” or “consumption lounges,” where medical or personal-use cannabis may be consumed by persons 21 or older. This article explores the proposed legislative framework to operate a consumption lounge in the state, and sets forth some of the anticipated, potential issues that may arise as these lounges become operational.

Under the proposed regulations, a consumption lounge must be operated by a permitted medical cannabis dispensary or a licensed Class 5 cannabis retailer that obtained both state and local endorsement. It should be noted that the host municipality has the power to adopt ordinances that permit, or prohibit, cannabis consumption lounges within the municipality. If permitted, these municipal ordinances may govern the manner, time and location of the operation, including minimum distances from schools, daycare facilities, playgrounds and places of worship.

A consumption lounge may be either in an indoor, structurally enclosed area that is separate from where medicinal cannabis is dispensed or where the retail sale of cannabis items occurs, but which is only accessible through an interior door after first entering the dispensary or retail facility, or in an exterior structure, not required to be completely enclosed, on the same premises as the medicinal cannabis dispensary or cannabis retailer that is either separate from or connected to the dispensary or retailer. The indoor consumption lounges may prove to be particularly expensive, as the CRC requires that the operator comply with all ventilation requirements applicable to indoor consumption cigar lounges. This would require the indoor consumption lounge to be equipped with solid walls, windows and doors, plus a ventilation system that is separately exhausted from the nonsmoking areas in order to prevent smoke from the back streaming into the nonsmoking area. The exterior consumption area must also have adequate ventilation, although not necessarily equivalent to what is required for cigar lounges, and may not be visible to the street. It should be noted that ventilation units are not inexpensive, and the consumption lounge operator should also be aware of the extra fees an applicant will be required to pay to operate a consumption lounge (including additional application fees and licensing fees), and to obtain the necessary land use approvals for operation.

Prospective consumption lounge operators should also consider the laundry list of personnel and patron conduct restrictions and the safety restrictions applicable to consumption lounges. To start, the proposed regulations make it clear that while the consumption lounge may supply cannabis, they are restricted from providing food, beverages, alcohol or tobacco. Consumption lounges are not retail food establishments and are forbidden from operating as such. Still, consumption lounge patrons may be allowed to bring their own food, or order delivery to the consumption lounge. As such, the owners might consider operating a separate business in close proximity to supply these services or to develop a relationship with local food establishments that may receive business from nearby consumption lounges.

The CRC takes safety seriously and has proposed several restrictions, including: limitations on the amount of cannabis sold (and the number of sales transactions on the same day) to a patron to be consumed in a

consumption area; requiring proof that the patron is at least 21 years old (use of a government-issued identification card); forbidding personnel from selling or serving cannabis items to a patron or from allowing additional use of cannabis items by a patron who shows signs of intoxication; providing information to patrons related to the safe consumption of cannabis; and forbidding on-duty personnel from consumption. In the event of an emergency, on-site consumption must cease until any first responders, including but not limited to police officers, firefighters, and medical services providers, complete their investigation or services and leave the premises.

While the proposed regulations provide a good starting point for safety in a consumption lounge, additional guidelines and extensive personnel training to address foreseeable liability issues that a consumption lounge may face for supplying or serving a patron with cannabis may be required. Think dram shop laws—for cannabis. Under the state's current dram shop statute, a person who suffers an injury caused by an intoxicated individual is entitled to seek damages from an establishment that negligently served or sold the alcohol if the injury was proximately caused by the service or sale of alcohol. Similar logic most likely will apply to cannabis intoxication at consumption lounges that supply or serve cannabis to a patron who thereafter leaves and injures someone else due to their cannabis intoxication. We anticipate that the State's legislature will amend the existing dram shop statute, or adopt a similar statute to address the sale and service of cannabis in consumption lounges. Consumption lounges will need to be keenly aware of this possibility and make sure that they limit patron consumption and assure personnel are trained to recognize when a patron is intoxicated to (hopefully) avoid potential liability.

Disclaimer: Cannabis remains a scheduled narcotic under federal law, and anyone considering entering this field should first consult with competent counsel. The information contained in this article does not constitute legal advice and is for informational purposes only.

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