



**STATE OF CONNECTICUT**  
*DEPARTMENT OF CONSUMER PROTECTION*

**MEMORANDUM**

**TO: Governor Lamont, Committee Co-Chairs, Ranking Members, and Committee Members**

**FROM: Department of Consumer Protections, Legal Division**

**RE: On-site Cannabis Consumption and Events**

**DATE: December 28, 2022**

The purpose of this memorandum is to aid in the determination of whether to authorize on-site cannabis consumption or events. This memorandum provides information on the regulation and licensure of cannabis consumption lounges in other states, the public health and fiscal concerns associated with such lounges and possible legislative and social equity issues.

Background

Several states that have legalized adult-use cannabis have reported subsequent upticks in cannabis-related arrests, mostly for consuming cannabis in public spaces where consumption is not allowed. Rental properties (especially federally subsidized housing) and hotels often have smoking bans, and in states where public consumption is prohibited, the effect is legalized cannabis without any legal and safe spaces where renters and tourists can consume. Proponents also argue that it is preferable for consumers- particularly novices- to use cannabis in supervised and safe places where there are limits on consumption and taxi and ride sharing is readily available. One way to address these concerns is to legalize cannabis consumption lounges.

Summary

Cannabis consumption lounges are permitted in ten (10) of the twenty-three (23) U.S. states and territories where adult-use cannabis consumption is legal. All states that permit on-site consumption stipulate that:

- people under the age of 21 are not allowed in consumption lounges,
- the consumption areas must be properly ventilated,
- games that encourage consumption cannot be played in the lounge,
- the cannabis cannot be visible from the street,
- alcohol and tobacco cannot be sold by establishments licensed for on-site consumption, and
- consumption lounges are subject to approval at the municipal level.

Examples of further restrictions include:

- prohibiting the concurrent sale of food or drink (California),
- limiting sales to single-serving cannabis products to ensure the establishment is not to be confused with a full dispensary (Nevada), and
- limiting consumption facilities to bring your own cannabis (BYOC) establishments (Illinois, Michigan).

## Regulations and Licensure of Cannabis Consumption Lounges in Other States

Currently, California is the state that has the most licensed cannabis consumption lounges in operation. Massachusetts, New Jersey, New York, and Nevada have all passed legislation that allows for the existence of cannabis social consumption spaces but have yet to license any establishments.

Alaska consumption lounges are open in two cities with two more approved but not yet operational. Customers can purchase up to 10 mg of THC edibles or up to one gram of flower, and everything consumed must be purchased on site, with no allowance for outside products to be brought in.

In California, there are currently about a dozen consumption lounges operating clustered largely in the Oakland and San Francisco areas. The number of lounges is expected to, at least, double in the next year as new licenses are issued by municipalities in Southern California and the Central Valley. Municipalities must opt in for lounges to be allowed and there is high degree of local control. At the state level, applicants must apply for retail permits since specific consumption lounge licenses do not exist. This presents a challenge for lounge operators not affiliated with a retailer. California law does not presently allow for the concurrent sale of food and beverages at cannabis lounges.

Colorado consumption lounges have been legalized at the state level, and it is up to individual municipalities to permit them proactively. There are a number of establishments in the state, most of which are member-only BYOC establishments. Some establishments are non-traditional, including a bed-and-breakfast with cannabis-friendly recreational events (such as comedy nights, music, educational events, yoga classes, etc.) and meals, and a church.

In Illinois, there are two lounges open in the state of Illinois with more slated to open in early 2023. Cannabis is not for sale at either location and must be brought in by consumers. These BYOC lounges are accessible to both medical and adult-use cannabis users.

Nevada approved the regulations governing cannabis consumption lounges in June, with the first of the establishments anticipated to open in early 2023. The regulations permit 20 freestanding establishments and did not set a cap on the number of lounges attached to existing dispensaries, of which Nevada currently has 65. Ten of the lounge licenses are reserved for social equity applicants. The lounges will be allowed to serve food, but no alcohol or nicotine products are permitted. Attendees will be required to purchase cannabis at the lounge, and servings are capped at 10 mg for edible products and 3.5 g for smokable flower. Applicants must have a minimum of \$200,000 in liquid assets to be eligible for a license, and must meet other requirements, such as establishing partnerships with ridesharing or taxi services, as well as setting up tow-free parking lots, hiring a diverse staff, labeling potent products as not for inexperienced users, and providing water free of charge.<sup>1</sup>

In Massachusetts, currently two businesses are operating like consumption spaces—one is portable and travels to private events, and the other is a brick-and-mortar members-only

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<sup>1</sup> <https://www.marijuanamoment.net/nevada-cannabis-consumption-lounges-could-go-live-by-end-of-2022/>

establishment in Worcester- but neither is licensed to do so. Although Massachusetts voters approved social consumption sites in 2016, a technical glitch in the drafting of the 2016 legislation made issuing licenses impossible as it required municipalities to hold a referendum on the question without including language about how to trigger such a vote. S.3096, which was signed into law in August of 2022, fixed the drafting issue and cleared the way for consumption lounges. The new law includes a pilot program that allows cannabis cafés to open in a select number of cities and towns. In addition to the five communities that participated in the Commission’s social consumption working group (North Adams, Amherst, Springfield, Provincetown and Somerville), seven more municipalities will be selected to be a part of the pilot program. Smoking cannabis will not be allowed in indoor spaces, as customers will only be allowed to consume via vaping or edibles. Smoking outside in outdoor patio areas may be allowed but will require additional approval from local authorities.

Michigan consumption lounges have been legal since 2019, but because of the pandemic, few businesses applied for permits. Presently, there are two adult-use lounges open and operating. None sell their own cannabis, instead allowing patrons to bring their own or have it delivered in from nearby dispensaries.

In New Jersey, it is left up to localities whether to allow cannabis lounges and if they do so, no cannabis products can be visible from outside. New York’s current legislation does not allow consumption establishment licensees to possess other cannabis establishment licenses such as dispensaries, cultivators, or other manufacturing licenses. The state’s main priority was to create safe consumption sites for individuals whose housing situations prohibit at-home consumption. However, consumption establishments have yet to open in New York as its adult-use program is still in its infancy. New Mexico currently has one existing consumption lounge open to both medical and adult-use cannabis consumers. Pennsylvania, too, has only one consumption lounge open, which is BYOC only and limited to medical cardholders.

Number of Cannabis Consumption Lounges in Other States

Fewer than half of the states where adult-use cannabis is legal have opted to permit cannabis consumption lounges. Of those, several have yet to issue any licenses and those that have issued licenses have only a handful of lounges, as shown in the chart below:

| State         | # of lounges | Notes               |
|---------------|--------------|---------------------|
| Alaska        | 4            |                     |
| California    | 12           |                     |
| Colorado      | 13           |                     |
| Illinois      | 1            |                     |
| Massachusetts | None yet     |                     |
| Michigan      | 2            | Plus 1 medical only |
| Nevada        | None yet     |                     |
| New Jersey    | None yet     |                     |
| New York      | None yet     |                     |
| New Mexico    | 1            |                     |
| Pennsylvania  | 1            | Medical only        |

## Regulation and Licensure of Cannabis Consumption Events in Other States

Unlike social consumption lounges, which are permitted in just under half of the states where adult-use cannabis is legal, very few states permit cannabis consumption events. Although there have been unlicensed one-off or “underground” type of events in a number of states, California is the only state that has a specific cannabis event license type and a defined application process. To hold a cannabis event in California, one must obtain a license. The cannabis event organizer is not authorized to cultivate, distribute, manufacture, or sell cannabis or cannabis products, unless the licensee holds a separate license for that activity. No alcohol or tobacco may be consumed at a cannabis event. All cannabis must be tested prior to being offered at the event and any cannabis offered must have been transported to the event by a licensed distributor.

## Public Health Considerations

As with cannabis law generally, lounge operators face a patchwork of state and local regulations that vary tremendously by jurisdiction. In most places, cannabis lounge owners are not protected by dram shop laws that otherwise insulate bars and restaurants from liability for overconsumption. Evaluating and preventing overconsumption and intoxication will be particularly difficult for cannabis when: patrons have varying experience levels with cannabis; products can be sold in more than a single serving, and no specific consumer education is required.

Most existing property, general liability, products liability, and other insurance policies-- including those written for the cannabis industry -- expressly exclude coverage for onsite consumption or bodily injury caused by intoxication. In fact, some existing cannabis insurance companies include a “health hazard” exclusion in their policies, which exclude coverage for any bodily injury arising in any way from the use of cannabis, including any health injury. Cannabis insurance policies may also exclude coverage for intentional or illegal acts, which some insurers may try to apply to any claim involving cannabis on the basis that the sale of cannabis violates federal law (the Controlled Substances Act), even if it is legal at the state level.

This uncertainty around the availability of meaningful liability coverage for licensees, as well as the lack of a cannabis intoxication test with sufficient specificity to determine the proximate time of last use, may create risk sufficient to deter would-be applicants. Whether the potential risk would be outweighed by the financial incentive to obtain a cannabis consumption lounge license will likely depend on the: 1) specific privileges conferred by that license; 2) cost of compliance; and 3) licensee’s ability to co-locate, or vertically integrate other profit generating license types such as retail stores.

Smoking and vaporizing cannabis create secondhand cannabis smoke (SHCS) and unhealthy indoor air quality. Although not identical, cannabis and tobacco smoke contain many of the same toxins. Cannabis pre-rolls generate 3.5 times the secondhand smoke as a Marlboro cigarette. Though vaping produces less smoke, it pollutes the air at a similar level to a cigarette. Long-term smoking of cannabis is associated with many of the same poor health effects as smoking tobacco, including myocardial infarction, ischemic stroke, and chronic bronchitis.

Of the states that have legalized adult-use cannabis, roughly half have permitted consumption lounges, however, approximately 10% of localities ban indoor smoking in these businesses, and 23% limit indoor smoking and vaping to a separate room. Other common local legal requirements address onsite odor control, ventilation/filtration, and building location. A number of municipalities have banned smoking and vaping in lounges, limiting consumption to edible and topicals forms of cannabis.

If Connecticut elects to create indoor social consumption spaces, policymakers should be aware that ventilation systems cannot fully insulate workers and patrons from exposure to secondhand cannabis smoke or vapor. Thus, any legislation should include stringent air filtration standards established in consultation with the Department of Public Health and require disclosure of risks to patrons and employees. California and other states also require consumption lounges to have odor mitigation systems in place, which the legislature may also want to consider in Connecticut.

### Connecticut Law on Smoking

Connecticut has robust smoking laws that prohibit smoking almost everywhere, including in restaurants and bars. At present, the only relevant exceptions where smoking is allowed are in private tobacco clubs with or without a liquor license, private clubs with liquor permits, or the existing tobacco bars in the state. These bars and clubs were grandfathered in under the Clean Indoor Air Act in 2003, and no new permits have been issued that allow smoking inside a bar or club since. Smoking is permitted in up to 25% of the outside seating area of a restaurant that does not have a ceiling, so long as signs designate the area as for smoking. Smoking is also permitted in temporary seating areas established for special events and not used on a regular basis. E-cigarettes, hookahs, and vape pens are likewise banned in areas where cigarette smoking is not allowed. RERACA expanded the protection of the Clean Air Act by banning smoking in any outside area within 25 feet of any business doorway, operable window, or air intake vent. Thus, if the legislature elects to allow patrons to smoke cannabis in social consumption lounges, it should take care to include language limiting the placement of such lounges to freestanding locations with sufficient space on all sides to allow the 25 foot smokefree perimeter to be maintained as required by law. The perimeter requirement may create a barrier for those seeking to open a consumption lounge in one of Connecticut's higher density neighborhoods.

### Legislative and Social Equity Considerations

The creation of new adult-use cannabis credential types would require legislative amendments to RERACA. The legislation would need to spell out the parameters of each new credential, plus associated fees and renewal periods. The form and manner of the applications for each credential would also need to be specified. At the core of RERACA are significant social equity goals that should be integrated into any new license types. In other states, such as

Massachusetts, the social consumption lounge license has been reserved exclusively for social equity applicants.<sup>2</sup>

### Fiscal Impact on the Department of Consumer Protection

If the legislature creates new adult-use cannabis credential types, the legislation should also account for the additional administrative and enforcement costs associated with such an expansion. Depending on the number of additional credentials created and the specific privileges they confer, the Department will require additional resources to properly oversee the credentialing and operations of the new licensees.

The Department will provide more specific, appropriate fiscal information depending on the proposals the legislature decides to pursue.

### Department of Consumer Protection Recommendations

If the legislature elects to allow consumption spaces, the Department recommends that it do so by way of creating an endorsement option for existing retailer, hybrid retailer, and micro-cultivator licensees. Interested licensees should be allowed to apply for the endorsement upon submission of an application in a form and a manner prescribed by the commissioner and after payment of an additional fee. There are several advantages to utilizing an endorsement rather than creating a new license type:

- Requiring an affiliation between lounges and existing adult-use cannabis licensees ensures that lounges will have a reliable and lawful source of cannabis products to sell for onsite consumption;
- Since noncompliance with applicable safety regulations may have consequences on the underlying license, utilizing endorsements will incentivize compliance by lounge operators; and
- Endorsement would continue to maintain parity for social equity applicants since the social equity statutory scheme already applies to the underlying adult-use cannabis licenses.

If the legislature allows cannabis consumption events, the Department recommends that it do so by creating permits that are issued on a case-by-case basis. Permits may be issued with the commissioner's approval of an application submitted in a form and a manner prescribed by the commissioner and after payment of a statutorily set fee. The application should include demonstration of advance municipal approval of the event and the proposed event site. Only licensed retailers, hybrid retailers, and micro-cultivators should be eligible to apply for cannabis event permits, and the statutory language creating such permits should expressly state that the Department may take action on such underlying adult-use cannabis license should violations occur during a cannabis consumption event. The Department recommends limiting permitted events to one licensee. Should the legislature decide to allow events with multiple licensees, the Department recommends expressly creating joint and several liability for any and all participant licensees for

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<sup>2</sup> Note that the Department's recommended approach of credentialing lounges and events by way of endorsement and permits, and of limiting eligibility for both to licensed retailers, hybrid retailers, and micro-cultivators, ensures that social equity considerations are preserved, as they are applicable to the underlying licenses.

any violation that occurs at the event. This will ensure that multi-licensee events are well planned and will promote maximum compliance and adherence to public safety and security regulations by all participating licensees.

With respect to both cannabis consumption lounges and cannabis events, the Department recommends the following additional measures:

1. Allow municipalities the opportunity to either opt out of lounges and events or to affirmatively permit them on a local level.
2. Locations must meet requirements related to security, ventilation, staffing, and other operational standards as set forth by statute, regulations, and corresponding policies and procedures.
3. Ensure that consumption of cannabis occurs in a designated area which is not visible from any public place or from outside the cannabis consumption lounge or event.
4. Require all attendees to be at least 21 years of age.
5. Prohibit the sale or consumption of alcohol or other intoxicants at events and lounges and allow for the sale of food and non-alcoholic beverages so long as the necessary food service licenses are obtained.
6. Require event permittees and lounge operators to post robust signage encouraging safe transportation alternatives such as use of a ride sharing service or designated driver.
7. Require that cannabis products consumed at a lounge or event be purchased onsite only from the underlying retailer, hybrid retailer, or micro-cultivator licensee. Consider limiting the products available for sale to single-use cannabis products, ready-to-consume cannabis products, cannabis paraphernalia, cannabis-related accessories, products containing CBD, and products containing industrial hemp which are related to cannabis.
8. Consider placing a per customer consumption limit on cannabis. Given the deceptively long onset of intoxication for cannabis taken orally, consider setting a relatively low per customer consumption limit of 10 mg of edible cannabis.
9. Consumption event and lounge employees must be able to observe the consumption area at all times and do so from a physically separated area where smoking/ vaping is not permitted to minimize their risk of occupational exposure to SHCS.
10. Require all permittees and endorsed licensees to have a plan in place concerning disposal of wasted cannabis and cannabis-related paraphernalia.
11. Require that all sales of cannabis at lounges and events be tracked and logged electronically pursuant to RERACA and the adult-use cannabis policies and procedures.

12. Require lounges to supply approved to go bags to patrons who request them, to encourage cautious consumption and remove any financial incentive to consume everything purchased.
13. Require licensees and/ or permittees to prove that they have obtained a specified minimum amount of liability insurance coverage as part of the application process, and specify whether the required insurance is per loss or in the aggregate.

We thank you for the opportunity to discuss this important issue. The Department of Consumer Protection is willing to work with the legislature to provide further guidance and advice upon request.