

**CANNABIS COMPLIANCE BOARD
STATE OF NEVADA**



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TYLER KLIMAS
Executive Director

To: Brenda J. Erdoes, Director of the Legislative Counsel Bureau
From: Tyler Klimas, Executive Director of the Nevada Cannabis Compliance Board
Date: January 1, 2021
Re: Study on Nevada Cannabis Consumption Lounges

This report, required by Assembly Bill 533 (2019), details the feasibility and safe implementation for businesses that cannabis may be consumed in. AB 533 was the legislative act that created the Nevada Cannabis Compliance Board (“CCB”) and transferred the authority to license and regulate cannabis establishments from the Department of Taxation to the CCB. This report consists of an analysis on the following items as they pertain to businesses that cannabis may be consumed in, referenced hereafter as “consumption lounges”: the appropriate distance between such a business and a space of particular economic or community concern; the appropriate method of licensing and regulating such a business; whether such a business would be liable under a Dram Shop law type of liability; the number of licenses to be awarded to such businesses; the level of fees or taxes of such a business; and budgetary concerns of licensing and regulating such businesses.

Regardless of the type of facility or business model allowed by any future legislation authorizing consumption lounges, these establishments must be held to the same high standards of compliance as other cannabis establishments in the state and therefore must be strictly regulated in their entirety by the CCB.

Distancing

The appropriate distance between a consumption lounge and any space of particular economic or community concern should be the same as any adult-use cannabis establishment which is found in NRS 678B.250(3)(a)(2)(II). Consumption lounges will allow the use of, and may even sell, small amounts of cannabis and as such must be treated as other cannabis establishments. This would include the prohibition of lounges within 1,000 ft from all public or private schools, 300 ft from all community facilities, or 1,500 ft from an establishment that holds a non-restricted gaming license.

Licensing, Regulation and Oversight

Given that consumption lounges would face the same public health and safety concerns as current cannabis establishments, such as the importance of properly stored, maintained and safe product, potential for diversion of product or illicit market activity, and prevention of unauthorized sales to minors, regulatory oversight including licensing of the lounges must be subject to the authority of the CCB. Providing deference to local authorities for enforcement of lounges would significantly weaken the existing policy of maintaining a strong central regulatory authority over the cannabis industry, especially if sales were to be allowed on the premises.

If consumption lounges were to be legalized, the CCB, and the Cannabis Advisory Commission (“CAC”) under the direction of the CCB Chair, would design the process of developing such licenses and regulations through a number of public meetings and regulatory workshops. After a reasonable working period, the CCB would then promulgate regulations to govern operations of the lounges and how lounge licenses will be awarded. The CCB and CAC, through its public meetings, would place emphasis on certain issues including but not limited to the following:

The type of business model a lounge will use, such as: having the lounge attached to a cannabis sales facility; a standalone facility; the ability to sell single use cannabis in the facility; or a facility that allows a customer to bring in legally purchased cannabis. If selling in the lounge, what are the limits? Single use limits on sales would need to be created and implemented to prevent the creation of more cannabis sales facilities well above the cap as described in NRS 678B.260. Also, if allowed to sell, there must be a requirement that cannabis and cannabis products purchased at such a facility must be used at the facility and cannot be taken out of the facility. If no ability to sell, the CCB would need to create regulations to ensure the lounge would know that the cannabis brought into the lounge was purchased from a licensed cannabis sales facility.

Social equity concerns and how these new licenses can be prioritized towards those that have been disproportionately affected by the war on drugs.

Grandfathering issues based on the new distance limitations found in NRS 678B.250(3)(a)(2)(II), as noted above.

Occupational health and safety of workers. Recognize health and safety factors for agents or officers responding to concentrated environments.

How an existing cannabis sales facility can have both locations on their premises. Local governments would continue to play a role in zoning and permitting of any type of consumption lounge.

The packaging, labeling and warning requirements on single use doses of cannabis.

An education requirement so patrons would know what they are smoking or eating and not unknowingly over consume based on frequency of use.

Dram Shop Laws

Under Nevada's dram shop law, an alcohol vendor is not liable for serving alcohol to a person who is then subject to a civil action related to the consumption of alcohol. The elements of dram shop liability are injury to a third party (with standing to sue), the injury was inflicted by an intoxicated tortfeasor, and the intoxicated tortfeasor was served alcohol by a vendor acting negligently or in violation of the law. Under a dram shop law, vendors are liable if their actions are a proximate cause in bringing about injury to the third party.

Nevada's dram shop law, Nevada Revised Statute 41.1305, states,

1. A person who serves, sells or otherwise furnishes an alcoholic beverage to another person who is 21 years of age or older is not liable in a civil action for any damages caused by the person to whom the alcoholic beverage was served, sold or furnished as a result of the consumption of the alcoholic beverage.
2. Except as otherwise provided in this section, a person who:
 - (a) Knowingly serves, sells or otherwise furnishes an alcoholic beverage to an underage person; or
 - (b) Knowingly allows an underage person to consume an alcoholic beverage on premises or in a conveyance belonging to the person or over which the person has control, is liable in a civil action for any damages caused by the underage person as a result of the consumption of the alcoholic beverage.
3. The liability created pursuant to subsection 2 does not apply to a person who is licensed to serve, sell or furnish alcoholic beverages or to a person who is an employee or agent of such a person for any act or failure to act that occurs during the course of business or employment and any such act or failure to act may not be used to establish proximate cause in a civil action and does not constitute negligence per se.

Nevada courts have taken the position that the proximate cause of injury to a drunken patron or his victim was the patron's consumption of alcohol and the vendor's provision of alcohol was too remote from the loss to qualify as a legally sufficient cause of the loss. *Hamm v. Carson City Nugget*, 450 P.2d 358, 359 (Nev. 1969). The Nevada Supreme Court found the controlling consideration is public policy and the matter was most apt for legislative consideration, "They urge that if civil liability is to be imposed, it should be accomplished by legislative act after appropriate surveys, hearings, and investigations to ascertain the need for it and the expected consequences to follow." *Id.*

States are not required to extend dram shop laws to cannabis. However, if the Nevada Legislature passes legislation to authorize consumption lounges then it should expand NRS 41.1305 to also apply to cannabis. As the Nevada Supreme Court expressed, whether or not to impose liability on the vendor is a matter of public policy that should be considered by the legislature. Here, a cannabis vendor is similarly situated to an alcohol vendor and thus the civil liability standard and exceptions should be the same.

Regardless of the statutory direction in consideration of patron or vendor liability, state and local law enforcement involvement in the general development of consumption lounge authority will be of critical importance.

Number of Licenses

The CCB, and the CAC under direction of the CCB, would workshop the creation of such licenses and if there needs to be a limit of such licenses. The CCB would support the granting of consumption lounge licenses be prioritized towards those that have been disproportionately affected by the war on drugs.

Fees and Taxes

The CCB would recommend an initial license fee and renewal fee structure similar to those imposed for cannabis sales facilities (NRS 678B.390) and the tax structure should be similar to cannabis sales facilities in the event the lounges are authorized to sell cannabis. Initial license fees should be set between \$10,000 and \$30,000, with renewal fees between \$3,300 and \$10,000, solely dependent on the type of consumption lounge that is authorized to be created.

Budgetary Impact

To properly regulate a newly created consumption lounge industry, the CCB and the Attorney General's office would need to hire additional personnel. Currently, there is no legal venue outside of a private residence for residents and visitors to consume cannabis. This lends to significant gaps in data that would allow for the state to accurately estimate the number of lounges that may come into existence once legalized. Given the significant and partly unknown policy shift consumption lounge legalization would effectuate, it is critical that this new segment of the industry is adequately and appropriately regulated from the very beginning.

Based on an estimation of a possible 132 consumption lounges becoming operational, which matches the number of cannabis sales facilities allowed by Nevada Revised Statute, the CCB would require at a minimum seven additional inspectors, seven additional auditors, six additional compliance investigators, four additional POST enforcement positions, two additional agent card team members, one additional program officer, two additional administrative assistants, and one additional accounting assistant to account for the increase in regulatory workload. As with all CCB personnel, funds to pay for staff come directly from administrative and licensing fees, time and effort billing for regulatory and compliance checks, and cannabis wholesale tax revenue. These staffing numbers would be absolutely necessary to safely implement and enforce a newly created regulatory scheme governing cannabis lounges in Nevada.

Additionally, the Attorney General's office would need to hire two additional deputy attorneys general at a minimum, as well as one more support personnel to support the increase in regulatory enforcement actions.

In conclusion, the CCB is prepared to enact and enforce the will of the Nevada Legislature as it pertains to consumption lounges. However, if consumption lounges are to be legalized in Nevada, no matter the business model approved, these new entities must fall under the strict authority of the CCB. This Board was established by the Legislature to further develop and maintain a safe, strictly regulated cannabis industry, one absent of illicit market activity and managed by the State of Nevada without risk of outside intervention. Ensuring consumption lounges are held to the same high standards as current cannabis establishments is the only way to truly protect the public health and safety of Nevadans and our visitors while providing for additional sources of revenue for the state.

The appendix attached below is a summary of where other states stand in the process of creating consumption lounges. The CCB staff remains available and looks forward to any questions or discussions as a result of this correspondence.

Sincere regards,

A handwritten signature in blue ink, appearing to read 'TK' with a stylized flourish above it.

Tyler Klimas
Executive Director
Nevada Cannabis Compliance Board

cc: Hon. Michael Douglas, Chairman

Sources:

Assembly Committee on Judiciary (Eightieth Session: May 21, 2019)

Governor's AB 533 PowerPoint

AB 533 Exhibit D Amendment Assembly Committee on Judiciary (May 24, 2019)

Assembly Committee on Ways and Means (May 31, 2019)

Senate Committee on Judiciary (June 01, 2019)

A Day in the Life of a Cannabis Lounge (2018) <https://www.leafly.com/news/lifestyle/a-day-in-the-life-of-a-cannabis-lounge>

Jeffrey W. Stempel, *Making Liquor Immunity Worse: Nevada's Undue Protection of Commercial Hosts Evicting Vulnerable and Dangerous Patrons*, 14 Nev. L. J. 866 (2014).

Thomas Stufano, *Through The Smoke: Do Current Civil Liability Laws Address the Unique Issues Presented By The Recreational Marijuana Industry*, 34 Touro L. Rev. 1409 (2018).

Appendix

Background on Other States' Creation of Consumption Lounges

I. California

a. San Francisco Office of Cannabis

i. Article 8A: Cannabis Consumption Permits

https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_health/0-0-0-59429

1. 3 types of permits: pre-packaged – no preparation, limited preparation, cannabis smoking

b. Oakland

i. 5.80.025. Onsite consumption permit.

1. Dispensary must obtain a secondary onsite consumption permit.
2. May be issued at the discretion of the City Administrator to dispensaries in good standing.
3. Shall be liable for excessive police costs related to enforcement.
4. All onsite consumption permits shall be special business permits and shall be issued for a term of one year.

ii. 5.80.035. Regulations.

1. City Administrator shall establish administrative regulations for the permitting of onsite consumption, and may set further standards for such operations and activities through administrative guidance and formal regulations.

c. West Hollywood <https://www.weho.org/business/cannabis>

i. 5.70.041. Cannabis Consumption Area with On-Site Adult-Use Retail – Operating Requirements.

1. Shall provide a neighborhood security guard patrol for a two-block radius surrounding the business during all hours of operation.
2. WeHo City Code Compliance Officers, WeHo Sheriff's Deputies, LA Fire Department staff, or other agents or employees requesting admission for the purpose of determining compliance shall be given unrestricted access.
3. Operators shall attend regular meetings with the LA County Sheriff's Department, LA Fire Department, and City Public Safety Department staff to review public safety issues associated with the operations.

a. <http://qcode.us/codes/westhollywood/>

4. Amendments

- a. Cannabis products that are partially consumed may be taken offsite, as long as it does not exceed limits, and abides by packaging requirements.

i. https://weho.granicus.com/MetaViewer.php?view_id=&event_id=1163&meta_id=180112

ii. Cannabis Consumption Area Business License Application

1. Cannabis Business Indemnity Agreement Form
2. <https://www.weho.org/home/showdocument?id=39934>

d. *Palm Springs*

i. **Is it true that Palm Springs is allowing consumption lounges?**

1. Yes, the City is permitting for lounges, subject to the property development standards contained in Palm Springs Zoning Code 93.23.15.
2. <https://www.palmspringsca.gov/government/departments/special-program-compliance/cannabis-related-business-and-activities/what-to-know/cannabis-faq>

ii. Cannabis Lounges. Cannabis Lounges shall be subject to the following requirements:

1. Separate Premises. Cannabis Lounges shall be located on a separate parcel or within a separate tenant space that is segregated and apart from any other use. A Cannabis Lounge Facility shall have a dedicated entrance, and shall have no internal connections or passage to any other tenant space or use, with the exception of a Cannabis Dispensary that serves the Cannabis Lounge use.
2. Sale of Cannabis and Cannabis Products/Goods. Cannabis and Cannabis products/goods may be sold on the premises of a Cannabis Lounge, subject to the requirements set forth in Chapter 5.55 or other applicable provisions of this Code.
 - a. http://www.qcode.us/codes/palmsprings/view.php?cite=chapter_5.55&confidence=6
3. Alcohol and Tobacco Products. The sale or consumption of alcohol or tobacco products is not allowed on the premises.
4. Visibility. The smoking, inhalation, consumption or ingestion of cannabis or cannabis goods shall not be visible from any public place or any area where minors may be present. The Cannabis Lounge shall be located within a completely enclosed building.
 - a. http://www.qcode.us/codes/palmsprings/view.php?topic=zoning_code-93_00-93_23_15&frames=on

II. Colorado

a. *Code of Colorado Regulations: Marijuana Enforcement Division*

- i. “Consumption Area” a designated and secured area within the Licensed Premises of a Licensed Hospitality Business where consumers can use and consume marijuana and where no one under 21 is permitted.
 1. May, but is not required to, be part of a Restricted Access Area.
- ii. “Marijuana Hospitality Business”
 1. Licensed to permit the consumption of marijuana within a Consumption Area pursuant to Article 10
- iii. “Retail Marijuana Hospitality and Sales Business”
 1. A facility, cannot be mobile, licensed to permit the consumption of only the retail marijuana products it has sold

- iv. Retail Marijuana Hospitality and Sales Businesses shall not sell retail marijuana or permit the consumption or use of retail marijuana on its licensed premises, between the hours of 2:00 a.m. and 7:00 a.m., Monday through Sunday.
 - 1. 3-245: Selling and Serving Regulated Marijuana
 - a. Nothing in this rule shall prohibit a local jurisdiction from further restricting hours of operation within its jurisdiction.
 - v. Additional Curriculum for Licensed Hospitality Businesses
 - 1. ID signs of visible impairment, resources to mitigate impaired driving, responsible use educational resources, cease all consumptions until law enforcement or other public safety personnel have completed any investigation or services and left the premises
 - vi. No Visible Consumption of Regulated Marijuana
 - 1. Shall ensure that the display and consumption of any marijuana is not visible from outside of its licensed premises
 - a. Outdoor consumption areas permitted
 - i. Out of plain sight and not visible from a public place without the use of optical aids or aircraft
 - ii. Surrounded by a sight-obscuring wall, or other opaque or translucent barrier
 - vii. Required Signage
 - 1. ID of consumption area
 - a. 12X12 – “Consumption Area – No One Under 21 Years of Age Allowed.”
 - 2. We reserve the right to refuse entry or service for reasons including visible intoxication. It is against the law to drive while impaired.
 - viii. Conduct
 - 1. No alcohol, tobacco, or employee consumption.
 - ix. Emergency Entry
 - 1. Must cease consumption and all other activities until personnel have completed their investigation or services and have left the Licensed Premises
 - x. Criminal Activity Reporting Requirements
 - 1. A licensed hospitality business must report directly to the Division any criminal activity requiring an in-person from law enforcement. Must be submitted within 48 hours after an owner licensee or employee licensee of the licensed hospitality business learns of the event.
 - xi. Licensed Hospitality Businesses: Operation Within a Retail Food Establishment
 - xii. Marijuana Hospitality Business: Requirements for Mobile Premises
 - 1. Consumption Area of the Mobile Premises shall excluded the area designed to seat the driver and front seat passenger.
 - 2. Not visible outside of the vehicle.
- b. *House Bill 19-1230: Marijuana Hospitality Establishments*
- i. <https://leg.colorado.gov/bills/hb19-1230>
 - ii. Leaves it up to local governments to allow them.
- c. *Denver*
- i. Limited Social Marijuana Consumption Initiative (Initiative 300)

1. https://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Social_Consumption_Rules_Final_Jun2017.pdf
2. <https://www.denvergov.org/content/denvergov/en/denver-business-licensing-center/marijuana-licenses/social-consumption-advisory-committee.html>

III. Washington

- a. HB 1945
 - i. Did not pass, but governs a model for consumption lounges.
- b. Kush Tourism – Seattle
 - i. A non-private-residence consumption option. A bus is considered private.
 1. <http://kush tourism.com/the-cannabus/>

IV. Massachusetts

- a. 935 CMR 500.050
 - i. Social Consumption Establishment Pilot Program
 1. Limited to businesses controlled by and with majority ownership comprised of Economic Empowerment Priority Applicants or Social Equity Program Participants, Microbusinesses, and Craft Marijuana Cooperatives for 24 months
 - a. May extend if it will encourage full participation from communities that have previously been disproportionately harmed by marijuana prohibition
 2. Conduct studies to determine whether the goals of the exclusivity period have been met
 3. No person or entity other than those disclosed in the application shall be a person or entity have direct or indirect control in a social consumption establishment license.
 - ii. Marijuana Retailer
 1. A retailer cannot deliver marijuana or marijuana products to consumers or allow on-site social consumption by consumers on the premises of the marijuana establishment
- b. 500.141: Additional Operational Requirements for Social Consumption Establishments
 - i. Written Policies and Procedures
 1. For the sale, distribution, and servings of marijuana products and provide responsible vendor training to employees on the policies and procedures prior to commencing operations
 - a. Proper packaging labels, warnings, content amount, ingredients
 2. Ensure prevention of a consumer from bringing marijuana onto the premises that have not been obtained from the consumption establishment, and ensuring that accessories brought on site do not contain products not obtained from the establishment
 3. Can remove product, but it must comply with 935 CMR 500.141(3)(c)(a)
 4. Help impaired consumers find transportation
 - ii. Limitation on Sales
 1. Amount reasonable for on-site consumption

2. No more than 20 mg of THC within a single day
 - a. Shall not knowingly sell
3. May sell accessories or items not expressly authorized only after receiving the express written permission of the Commission
- iii. Social Consumption Sales
 1. Must distribute a consumer information cards, which inform consumer about the impairment effects of different forms of consumption
 - a. Orally affirm receipt and understanding
- iv. Consumption Area
 1. Separate sales and consumption area
- v. Incident Reporting
 1. Shall provide notice to appropriate Law Enforcement Authorities and the Commission
 2. Notify no more than 24 hours after the following occasion
 - a. Consumption of tobacco or tobacco products
 - b. Consumption of marijuana not purchased from the establishment
 - c. Consumption in a designated sales area and other area outside of the designated consumption area

V. Michigan

<https://www.michigan.gov/mra/0,9306,7-386-82631---,00.html>

- a. “Designated Consumption Establishment” means a commercial space that is licensed by the agency and authorized to permit adults 21 years of age and older to consume marihuana products at the location indicated on the state license issued under the Michigan regulation and taxation of marihuana act.
 - i. https://www.michigan.gov/documents/mra/2019-67_LR_Marihuana_Licenses_694519_7.pdf
- b. A designated consumption establishment license is valid for 1 year.
- c. A person that allows consumption of marihuana products on the premises of a non-residential location and charges a fee for entry, sells goods or services while individuals are consuming on the premises, or requires membership for entry shall acquire a designated consumption establishment or temporary marihuana event license.
- d. R420.22 Designated consumption establishment license.
 - i. Regulations - pages 21-23 of attached document.
- e. R.420.28 Renewal; notifications; inspections and investigations; penalties; sanctions; fines; sale or transfer.
 - i. Page 27
- f. 420.203. Marihuana licenses; licensees; operations; general.
 - i. Sale, consumption, or serving of food except as provided in these rules unless the business is designated consumption establishment or a temporary marihuana event that has obtained the appropriate authorizations from other federal, state, or local agencies as applicable.
 1. Page 5 - Marihuana operations documents.
- g. R420.207 Marihuana delivery; limited circumstances.
 - i. For the purposes of this rule only, a marihuana sales location may accept an online order request of a marihuana product and payment for the order that

will be delivered only to the physical residence of the required qualifying patient as provided in this rule, or to a residential address or the address of a designated consumption establishment provided by an individual 21 years of age or older as provided in this rule.

1. Page 10 – marijuana operations documents.

VI. Illinois

- a. HB 1438 – Cannabis Regulation and Tax Act
 - i. Sec. 55-25. Local ordinances.
 1. A unit of local government, including a home rule unit, or any non-home rule county may authorize or permit the on-premises consumption of cannabis at or in a dispensing organization or retail tobacco store within its jurisdiction. A dispensing organization or retail tobacco store authorized or permitted by a unit of local government to allow on-site consumption shall not be deemed a public place within the meaning of the Smoke Free Illinois Act.

VII. Alaska (all citations related to onsite consumption - April 11, 2019)

- a. (44) “marijuana consumption area” means a designated area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement, where marijuana and marijuana products, excluding marijuana concentrates, may be consumed.
- b. 3 AAC 306.060. Protest by local government
 - i. PG 15-16
 1. Not later than 60 days after the director sends notice of an application
 - a. Written protest and reasons for the protest
 2. May recommend that the board approve an application
 3. Local government determines a violation by a licensee, the local government may notify the board
- c. 3 AAC 306.200. Local options
 - i. PG 23
 1. They can vote on the prohibitions of certain businesses or operations.
- d. 3 AAC 306.305. Retail marijuana store privileges
 - i. (a)(4) With prior approval of the board, permit consumption of marijuana or a marijuana product purchased on the licensed premises, in a designated area on the licensed premises.
- e. 3 AAC 306.355. Limit on quantity sold
 - i. (a) no more than one ounce, seven grams of concentrate, 5,600 mg of THC in combined sales of marijuana and marijuana products
 - ii. (b) these limits include marijuana or marijuana product sold for onsite consumption under 3 AAC 306.370
- f. 3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores
 - i. PG 33-36
 1. Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved onsite consumption endorsement is authorized to
 - a. Sell for purchase only in an area designated for consumption and separated from the remainder of the premises either by a

secure door and having a separate ventilation system, or by being outdoors

2. Limits

a. Sell for consumption

- i. no more than one gram, one person per day
- ii. edibles not to exceed 10 mg of THC to any one person per day
- iii. food and beverages not containing marijuana or alcohol

b. All a person to remove product that has been purchased, provided it is packaged accordingly

g. 3 AAC 306.701. Marijuana Handler Permit Education Course

- i. PG 78
- ii. Board must approve before a course provider may issue a marijuana handler permit.