CONNOR & CONNOR PLLC

ATTORNEYS AT LAW

2580 ANTHEM VILLAGE DRIVE, HENDERSON, NV 89052

July 6, 2023

Via Email Only
Cannabis Compliance Board
700 E. Warm Springs Rd., Suite 100
Las Vegas, NV 89119
regulations@ccb.nv.gov

Re: NCCR 15.055

To Whom It May Concern,

I am writing as a cannabis attorney that practices in the State of Nevada. Given that the cannabis consumption lounge facilities will vary greatly with regards to design, layout, menu offerings, square footage, indoor and/or outdoor space, number of consumers and agents, the ventilation requirements should have the ability to meet such a variety of lounges. Therefore, I would propose that the Board consider the ability to seek a waiver of the regulation requirements and submitting an alternative ventilation plan certified by an engineer that would be subject to approval by the Board. Such an approach would allow the needed flexibility due to the various facilities while keeping consumer and agent safety as an utmost priority. For consideration, I have attached proposed language that would provide for a waiver while requiring an alternative ventilation plan subject to Board approval as ***Exhibit A***.

Sincerely,

CONNOR & CONNOR PLLC

By: _____
AMANDA N. CONNOR, ESQ.

ANC/ats

Encl.: as stated

Tel: (702) 750-9139 Fax: (702) 749-5991

Exhibit A

Draft Changes to NCCR Regulation 15

New
~~Deleted~~

15.055 Ventilation of the cannabis consumption lounge. A ventilation plan must be submitted, approved, with changes as necessary, and fully implemented prior to issuance of a final license. At a minimum, the ventilation plan must include:

1. A separate ventilation system within any designated smoking room capable of 20 complete air changes per hour at a minimum. *Excess air required to create negative pressure volume* ~~that~~ must be directly exhausted to the outdoors;
2. A separate system within the rest of the cannabis consumption lounge capable of 6 complete air changes per hour at a minimum. *Excess air required to create negative pressure volume* ~~that~~ must be directly exhausted to the outdoors;
3. The ventilation system within any smoking room must create a negative air pressure within the room;
4. A ~~High-Efficiency Particulate Air (HEPA)~~ *MERV 14 or higher* filtration system, or equivalent system, capable of handling the entire volume of air within any separate room of the lounge;
5. An odor mitigation plan that identifies, at a minimum, the following:
   (a) The specific odor control equipment to be installed and operated to mitigate odor emissions prior to leaving the building;
   (b) An engineering assessment approved by a certified professional engineer ensuring the odor control equipment installed and operated will mitigate odor emissions prior to leaving the building; and
   (c) An operation and maintenance plan showing the monitoring frequency for preventative maintenance, the timely responses to equipment malfunctions and the record keeping and employee training in place to ensure the odor control equipment to be installed and operating is maintained per manufacturer's specifications.
   (d) Any deviations from the odor mitigation plan or malfunction of equipment must be documented on a log that shall be provided to the Board upon request.
6. If the cannabis consumption lounge plans to use has an outdoor smoking area, the applicant must submit a request to the local jurisdiction and comply with any requirements the local jurisdiction may have regarding an outdoor smoking area.
7. Atmospheric monitoring of the non-smoking room of the cannabis consumption lounge focusing, at a minimum on an 8-hr average and 15 min peak CO2 and PM 2.5 concentrations which must include an audible and visual notification system, alerting the facility to any failures.
8. Any local jurisdiction requirements. Local jurisdiction requirements can be more restrictive than the NCCRs.

9. ***A consumption lounge may request a waiver to all or a portion of the requirements in sections 1-4 above by submitting an alternative ventilation plan that is approved by a certified professional engineer and details how the plan will protect the agents working in the lounge as well as the customers of the lounge. The wavier and alternative ventilation plan is subject to receiving approval from the Board at a properly noticed public meeting.***

R E S E T

July 7, 2023

Cannabis Compliance Board
Grant Sawyer Office Building, Suite 4200
555 E. Washington Avenue
Las Vegas, NV 89191

Subject: NCCR 15.055 Ventilation of the cannabis consumption lounge

Dear members of the Cannabis Compliance Board:

On behalf of the RESET consulting company, thank you for considering our written comments regarding ventilation for consumption lounge regulations. In comments submitted on June 16th, 2023 we discussed meeting with a number of experts in the HVAC industry and the American Society of Heating, Refrigaterating, and Air-Conditioning Engineers (ASHRAE) professional association. Our findings resulted in a number of potential options outside of air exchanges per hour with recommendations based around current Federal regulations and the Environmental Protection Agency's *National Ambient Air Quality Standards* (NAAQS).

With the intent of operating a cannabis social-use lounge more akin to a restricted license gaming tavern than a traditional cigar bar, we believe air quality standards should reflect the business plan of these individual venues versus blanket regulations. With a focus on revenues from infused and non-infused food and beverage in conjunction with a robust entertainment schedule, our ability to attract non-endemic audiences will rely on cannabis form-factors outside of combustibles. Utilizing air-scrubbing technology and monitoring air quality per the requirements of NAAQS allow for power conservation while recirculating clean air establishes a comfortable environment for both customers and employees alike. To guarantee the venue's success, clean air strategies are tantamount.

Having worked throughout the promulgation of cannabis consumption lounge rules, we respect the time and energy by our regulatory bodies and wish to maintain a partnership whereby operators would record air-quality data to submit to the CCB on an annual basis to confirm efforts made are in the best interest of our communities.

Our proposed changes to NCCR 15.055 can be found below:

New
~~Deleted~~

15.055 Ventilation of the cannabis consumption lounge. A ventilation plan must be submitted, approved, with changes as necessary, and fully implemented prior to issuance of a final license. At a minimum, the ventilation plan must include:

1. A ~~separate~~ ventilation system within any designated smoking room capable of ~~30~~ **8** complete air changes per hour at a minimum**. Excess air required to create negative pressure volume** ~~that~~ must be directly exhausted to the outdoors;
2. ~~A separate system within the rest of the cannabis consumption lounge capable of 20 complete air changes per hour at a minimum that must be directly exhausted to the outdoors;~~
3. The ventilation system within any smoking room must create a negative air pressure within the room;
4. A ~~High-Efficiency Particulate Air (HEPA)~~ **Minimum Efficiency Reporting Value (MERV) 14 or higher** filtration system, or equivalent system, capable of handling the entire volume of air within any separate room of the lounge;
5. An odor mitigation plan that identifies, at a minimum, the following:
    (a) The specific odor control equipment to be installed and operated to mitigate odor emissions prior to leaving the building;
    (b) An engineering assessment approved by a certified professional engineer ensuring the odor control equipment installed and operated will mitigate odor emissions prior to leaving the building; and
    (c) An operation and maintenance plan showing the monitoring frequency for preventative maintenance, the timely responses to equipment malfunctions and the record keeping and employee training in place to ensure the odor control equipment to be installed and operating is maintained per manufacturer's specifications.
    (d) Any deviations from the odor mitigation plan or malfunction of equipment must be documented on a log that shall be provided to the Board upon request.
6. If the cannabis consumption lounge plans to use has an outdoor smoking area, the applicant must submit a request to the local jurisdiction and comply with any requirements the local jurisdiction may have regarding an outdoor smoking area.
7. Atmospheric monitoring of the non-smoking room of the cannabis consumption lounge focusing, at a minimum on an 8-hr average and 15 min peak CO2 and PM 2.5 concentrations which must include an audible and visual notification system, alerting the facility to any failures.
8. Any local jurisdiction requirements. Local jurisdiction requirements can be more restrictive than the NCCRs.
9. **A consumption lounge may request a waiver to all or a portion of the requirements in sections 1-4 above by submitting an alternative ventilation plan that is approved by a certified professional engineer and details how the plan will protect the agents working in the lounge as well as the customers of the lounge. The waiver and alternative ventilation plan is subject to receiving approval from the Board at a properly noticed public meeting.**

We appreciate your consideration of our written comments.

Sincerely,

Christopher LaPorte
Founder/Managing Partner
RESET

From: dwalsh@walshcih.com
Sent: Friday, July 21, 2023 4:44 PM
To: CCB Regulations
Subject: NCCR 15.055 Ventilation in Lounges Changes

I was wondering who was providing information or where it was coming from for the subject regulations. I have written the Odor Standard and Testing Protocol for Cannabis cultivation and production facilities for the City of Las Vegas (2015). I have also done over 20 Odor Control Plans for various companies per the Clark County requirements. I have over 30-years of experience in Las Vegas evaluating and controlling hazards from asbestos, mold and environmental tobacco smoke (ETS) as well as numerous other hazards. I also participate on writing international standards for Cannabis with the ASTM D37 Cannabis committee.

During asbestos abatement the Nevada OSHA regulation requires a minimum of 4 air changes per hour (ACH) and 0.02 inches of water negative air pressure at a minimum. This has worked well for controlling a known carcinogen for decades. As a Nevada Licensed Asbestos Abatement Consultant Project Designer I have designed asbestos abatement projects for decades. 20 ACH would cause a lot of exhausted air which may be impractical to filter to prevent outdoor smoke and odors. In a 20'X25'X10' room with a square foot make up air vent at 20 ACH with all air exhausted would require 1,667 cubic feet per minute (CFM) be blowing at about 19 mph from the 1'X1' vent. The American Society for Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) recommends an outdoor air (OA) level for a day care sick room as 90 CFM which is approximately 1 ACH for the 20'X25'X10' room. Also, the 20 ACH air would be very hot in the Summer unless it was tempered which would require a lot of energy. If implemented wrong, 20 ACH could cause a strong draft through the area and have temperatures similar to outdoors. The smoke particulates could be controlled with high efficiency filters; however, that would require frequent changes and a lot of energy. The vapor phase of burning Cannabis would be controlled with activated carbon which would saturate quickly and require regeneration or replacement frequently. A MERV 14 filtration system would likely require bag filters with prefilters. The Clark County Fire Station on the tarmac at Las Vegas Airport has a ventilation system with prefilters, bag filters, and carbon filters to filter out the aircraft engine exhaust. I have been there three times over the last 25 years to address jet exhaust odor issues. Another issue is the quality of the make up air which is often not very good in the Vegas Valley.

The regulation also specifies a "certified" professional engineer (PE). PEs are "licensed" in the State they practice. The preferable engineer would be a Mechanical engineering PE. I am not sure how many Mech PEs are knowledgeable about this kind of issue in Nevada. I am a Certified Industrial Hygienist (CIH) which is a well-recognized international certification by an independent ISO and ANSI compliant certifying body (ABIH.org). The Clark County Odor Control Plans require either a PE or CIH to sign off on them. The Las Vegas Odor protocol requires a CIH.

Carbon dioxide (CO2) and PM2.5 are mentioned in the regulation as requiring monitoring in a lounge. Having done numerous ETS evaluations in Las Vegas and overseas over the years the carbon monoxide (CO) issue is much more important from a hazard point-of-view than CO2 which should be mitigated by bringing in adequate outdoor air. Measuring CO2 as a surrogate for measuring adequate outdoor air adequacy for the occupancy present and has been using in indoor air quality assessment (IAQA) for decades. The ASHRAE guideline for CO2 is no more than 700 parts per million (ppm) over outdoor air which is currently around 415 ppm on average. The EPA outdoor standard for CO is 9 ppm averaged over 8 hours. The Nevada OSHA standard for CO is 50 ppm averaged over 8 hours.

PM2.5 is an EPA concept for outdoor air – not indoor air. Trying to meet the least restrictive EPA PM2.5 outdoor air standard of 35 micrograms per cubic meter (ug/M3) averaged over 24 hours in a smoking room would be very

difficult. A commonly used particulate measure for ETS is respirable suspended particulates (RSP). The Nevada OSHA limit is 5,000 ug/M3 averaged over 8 hours. Singapore has a limit of 50 ug/M3 averaged over 24 hours in non-smoking areas. This is a common indoor RSP level used in IAQA for decades. Also, there are different methods for analyzing RSP which would need to be addressed.

In addition to the RSP and CO generated by burning and cannabis there are a myriad of other hazardous and carcinogenic compounds released including acetaldehyde, ammonia, arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinoline. Measuring these on a daily basis would be impractical. Some of these are particulate in nature and could be controlled by filtration or local exhaust (i.e., a smoke capturing device where the smoker is). Some are vapors which need carbon filtration to remove with the local exhaust ventilation removal method being a bit less effective.

As you can see, this is a very complicated issue. In my personal opinion the ambient airborne hazards in the area where smoking occurs should not be of concern to the regulators. Those participating in that activity are voluntarily breathing in the smoke directly with all its health consequences. Cleaning their air seems like a waste of time. However, those not wanting to participate in the smoke exposure such as next door neighbors to the building, people on the street, and the nearby community should be protected. That would involve keeping the smoke in the smoking area. It could be filtered by recirculating portable air filters with HEPA and carbon to reduce its build up to hazardous level in the smoking area. Some outdoor air (i.e., ~20% or ASHRAE guidelines) would still have to be provided to reduce hazard material levels as is typically required in building code. The prevention of the smoke going through penetrations in walls and roofs, and the exhaust from the building could be controlled using negative pressure. Any smoke that is exhausted would first have to be filtered using bag filters (or HEPA) and carbon. In my business we deal with controlling airborne hazards as a part of my expertise. There are tried and true methods for this. I would be happy to consult with you.

Dale Walsh, MS, CIH, CSP, CEM, LEED-AP
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