

MEMORANDUM

TO: Cannabis Control Commission
FROM: Commission Staff
DATE: October 4, 2018
SUBJECT: **Social Consumption**

- I. Introduction
- II. Research Review on Social Consumption
- III. Policy Issues in Social Consumption
- IV. Conclusion

I. Introduction

As a practical matter in the United States, social consumption is limited to municipalities. While many states are moving toward permitting social consumption, Washington State expressly prohibits social consumption businesses. The operation of a social consumption facility in Washington is considered a felony criminal act.

A number of states are currently reviewing draft regulations that would allow for social consumption of cannabis. The Alaska Alcohol and Marijuana Control Board has a public comment period on the topic open until November 2018 and will hold a public hearing in December 2018. Regulations in the State of Alaska may be promulgated as soon as 2019. Maine's legalization panel voted to delay implementation of social consumption provisions until 2023.

Under G. L. c. 94G, § 4(b)(1), the Cannabis Control Commission (Commission) has the authority to license "the consumption of marijuana or marijuana products on the premises where sold." In March 2018, during the promulgation of regulations governing the adult use of cannabis, the Commission postponed discussion with respect to the social consumption and delivery of cannabis. The Commission committed to reengaging in conversation on the aforementioned topics in October 2018.

In response to a request from the Commission, Commission staff developed this memorandum to provide a thorough policy review regarding the topic of social consumption. This memorandum offers an overview of research on the topic of social consumption followed by common policy issues regarding on the topic and how other states have addressed these matters. This memorandum is intended only to inform the Commission's discussion during public deliberation and does not provide policy recommendations.

II. Research Review on Social Consumption

Research on the social consumption of cannabis is limited given the lack of states and municipalities that permit their operation. In this regard, it is helpful to assess outcomes from tobacco and

alcohol literature since a plethora of literature exists in these areas. Thus, a theoretical projection of possible outcomes in permitting the social consumption of cannabis may be made.^{1, 23}

A report published by the University of California San Francisco's Center for Tobacco Control Research and Education draws on the alcohol and tobacco literature and discusses the following risks¹:

- Exposure and ventilation (indoor social consumption) of cannabis smoke and/or vapor
- Impaired driving
- Server and retailer training and liability
- Outlet density (number of social consumption sites in a given proximity)
- Sites' proximity to sensitive locations e.g. schools, churches etc.

Regarding tobacco, the report states that there is no risk-free level of tobacco smoke exposure in an enclosed area and that exposure cannot be eliminated by simply separating smokers and nonsmokers, cleaning the air, or ventilating buildings. The report suggests a public health approach to limiting secondhand cannabis smoke by restricting public use similar to best practices utilized in tobacco control.¹

Due to the lack of empirical data from the United States, it is additionally useful to assess outcomes from the Netherlands, a country that has "quasi-cannabis-legalization" and permits social consumption cannabis sites, referred to as either "cafés" or "coffeeshops."

Prior to Colorado and Washington enacting adult-use cannabis laws in 2012, the Netherlands was the only country where retail sales of small amounts of cannabis for the adult use of personal, non-medical consumption was legal. Although the Netherlands' cannabis law differs from the U.S.' varying state-level adult-use laws, their cafés are set up similarly to what are commonly referred to as "dispensaries" in the U.S. Unlike U.S. dispensaries, however, which permit sale of cannabis products for adults aged 21 and older, in some Netherlands cafés, small quantities of cannabis can both be bought and consumed for adults aged 18 and older. In 2006, it was projected that there were 700 operational cafés in the Netherlands or one for every 29,000 citizens (one per 3,000 in Amsterdam).⁴ Cafés offer some insight into potential outcomes of implementation if Massachusetts moves forward with similar licensure for social consumption. However, there are limitations of these studies due to heterogeneity in policy and regulation.

Below are the enumerated results and conclusions from the literature assessing cannabis cafés and cannabis outcomes. Please note, however, that results must be understood in context as some cafés serve as both dispensaries and as "social consumption" sites, e.g. some results are more indicative of the dispensary mechanisms than social consumption mechanisms.

Key Findings of Empirical Research Studies in the Netherlands:

- Despite wide access to cafés, the prevalence of cannabis use remains on par with the European average.⁵

- Available evidence suggests that the prevalence of cannabis use among Dutch citizens rose and fell, but only modestly, as the number of cafés increased and later declined.⁶
- Trends in the lifetime prevalence of cannabis use in the Netherlands were rather parallel to changes in cannabis policy—along with the rapid growth in the number of cafés in particular, there was a significant increase in prevalence rates.⁷
 - Trends in cannabis use appear to be predominantly affected by other factors, specifically factors related to general developments among youth, which make cannabis more or less fashionable and acceptable.⁷
- Cafés do not appear to encourage escalation into heavier use or lengthier using careers.⁶
- Youth living close to these cafés are more likely to have earlier initiation of cannabis use than those living 20 kilometers from a municipality with a café⁸.
- For adults, café proximity does not seem to be linked to prevalence of cannabis use or intensity of use⁹.
- Café proximity of coffee shops does not seem to be linked directly to hard drugs use⁹.
- Failure to regulate the supply to cafés and cannabis cultivation is the source of many of the current negative side effects of the Netherlands cannabis policy⁵.
- For research on cafés reflecting outcomes of dispensary operations versus social consumption operations¹⁰:
 - More than 70% of cannabis is bought in licensed cafés.
 - Three variables were significantly and independently associated with buying from unlicensed suppliers: café density, age, and sex.
 - Higher café density means that individuals are less likely to buy outside of cafés.
 - Under-age buyers were more than twice as likely to buy their cannabis from unlicensed dealers.
 - Males were more likely to buy their cannabis from unlicensed sellers than females.
 - A substantial proportion of unlicensed suppliers sell other drugs as well, thereby increasing the risk of being offered hard drugs when buying cannabis.
 - This risk is greater for minors than for adults, since a higher proportion of minors use unlicensed selling points.

III. Policy Issues in Social Consumption

The legal social consumption of cannabis exists in very few jurisdictions around the nation. Currently, no state has executed a statewide licensing process for social consumption. To the extent that social consumption is limited nationwide, a Commission decision to implement social consumption would be notable. To further facilitate the Commission’s consideration, below is an exploration of some issues that have arisen across the industry where social consumption is already in place or is under consideration.

Issue 1: Marijuana Sales

Denver, CO

The state of Colorado restricts the sale of marijuana and marijuana products to only licensed retail marijuana stores or medical marijuana centers.^A The sale cannot take place within the licensed premises of a consumption area operator or anywhere outside of a licensed storefront. Consequently, patrons must bring their own marijuana and consume it in the designated consumption area.

A task force currently evaluating Denver's social consumption program noted the adverse effects of the limited opportunities for businesses to earn revenue and may seek changes at the state level.^B

Las Vegas, NV

A pending ordinance before the Las Vegas city council would permit hookah-style lounges, where adults may consume legal quantities of marijuana.^C These establishments would operate next to legal dispensaries and would not need to be licensed by the state. They would be permitted to sell marijuana paraphernalia but could not sell marijuana.^D The proposed ordinance would also allow social consumption businesses to sell beer and wine containing less than 11 percent alcohol content.^E

California

California is the only state allowing dispensaries to attach tasting rooms. The number of these lounges are limited, as local governments must approve on-site consumption.^F San Francisco, Oakland and South Lake Tahoe have licensed tasting rooms attached to dispensaries.^G

West Hollywood, CA

In November 2017, the city of West Hollywood approved amendments to the municipal code and zoning ordinance to regulate cannabis land uses.^H In April 2018, the city^I allowed for eight Consumption Area (smoking, vaping, ingestion) with On-site Adult-Use Retail (sales of products to be consumed on-site) Business Licenses; and eight Consumption Area (edible ingestion only) with On-Site Adult-Use Retail (sales of products to be consumed on-site) Business Licenses. To date, the city has not issued any licenses.

Alaska

The state of Alaska has drafted regulations,^J which would allow marijuana retailers in a freestanding location to be licensed to sell adults up to a gram for on-site consumption. Products

^A <https://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Cannabis%20Consumption%20FAQ.pdf>

^B https://www.denvergov.org/content/dam/denvergov/Portals/695/documents/SCAT_Meeting_Minutes_9-13-18.pdf

^C <https://mjbizdaily.com/wp-content/uploads/2018/09/Las-Vegas-Draft-Social-Consumption-Regulations.pdf>

^D <https://lasvegassun.com/news/2018/aug/28/las-vegas-officials-see-marijuana-lounges-opening/>

^E LVMC 6.96.100(A) Proposed Draft Ordinance

^F <https://www.sacbee.com/news/local/article199586359.html>

^G <https://www.westword.com/marijuana/san-franciscos-marijuana-lounges-put-colorados-to-shame-10798776>

^H <https://www.weho.org/business/cannabis>

^I <https://www.weho.org/home/showdocument?id=36213>

^J <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113809>

containing up to 10 milligrams of Tetrahydrocannabinol (THC) could also be made available for on-site consumption, although concentrates would be prohibited.

Related Issues for Consideration:

Applicants for social consumption licenses would likely need additional revenue streams, such as food or nonalcoholic beverage sales, and live entertainment options. Based on Denver's experience, this may increase the likelihood of a sustainable model of social consumption.

Issue 2: Zoning

Denver, CO

The city of Denver issued one license (The Coffee Joint) under a 2016 ordinance^K that allowed for social consumption and a second entity is moving through the regulatory process (possibly opening later this fall). As of August 2018, The Coffee Joint saw approximately 3,200 users of the consumption area in a 5-month period.^L

Various location and proximity restrictions^M for consumption areas have limited all but 20 square miles of Denver (about one-fifth of the city's non-airport land), according to a city estimate.^N A 1,000-foot buffer zone prohibits businesses from opening marijuana consumption areas near protected places, e.g. schools, licensed childcare centers, alcohol and drug treatment centers, city-owned pools and recreation centers.^O

A task force currently evaluating Denver's social consumption program noted the distance requirements that restrict available locations are limiting the success of the program. The task force is studying whether to permit variances to the buffer zone in some circumstances.^P

Los Angeles, CA

Overly strict local zoning has led to complaints that cannabis businesses are crowded into small sections of a municipality, often areas with vulnerable or low-income populations.^Q A study of medical-marijuana dispensaries in Los Angeles found that dispensaries were in primarily commercially zoned

^K <https://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Social%20Consumption%20Ordinance.pdf>

^L <https://www.denverpost.com/2018/08/18/denver-social-marijuana-use-program-struggling/>

^M <https://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Social%20Consumption%20Rules%20FINAL%206-30-17.pdf>

^N <https://www.denverpost.com/2018/08/18/denver-social-marijuana-use-program-struggling/>

^O <https://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Social%20Consumption%20Rules%20FINAL%206-30-17.pdf>

^P https://www.denvergov.org/content/dam/denvergov/Portals/695/documents/SCAT_Meeting_Minutes_9-13-18.pdf

^Q <https://mass-cannabis-control.com/wp-content/uploads/2018/08/Municipal-Equity-Guidance-August-22.pdf>

areas with greater road access, density of on- and off-premise alcohol outlets, and with a high percentage of Hispanic residents.^R

Related Issues for Consideration:

Real estate is one of the primary hurdles for small businesses and businesses owned by people from marginalized communities.^S When municipalities impose overly strict zoning rules and large buffer zones, they limit the number of parcels available to potential operators. These restrictions favor large businesses with substantial financial resources that can outbid other potential operators and overpay for a lease or purchase of property—often at the expense of smaller, local companies—and tend to direct large rewards to a small handful of landlords and property owners.

The experience of Denver, in which zoning laws stifled potential social consumption licensees, warrants close review. Further, social consumption in areas that are walkable, accessible to public transit and near other business establishments may avoid some of the issues of density in particular neighborhoods as California is experiencing. Social consumption establishments are businesses that could complement mixed-use neighborhoods, and locating these establishments in neighborhoods with public transit, the risk of impaired driving may decrease.

Issue 3: Indoor smoking

Denver, CO

Cannabis Consumption Licensees are required to comply with the Colorado Clean Indoor Air Act.^T State regulations ban smoking indoors in public places with few exceptions, including licensed hookah lounges with high-powered ventilation systems. Marijuana consumption in a social consumption context is limited to electronic vaping and edibles.

San Francisco, CA

Indoor smoking in dispensary tasting rooms is permitted. The lounges are required to install heating, ventilation, and air conditioning systems to prevent odor from leaking outside.^U

Alaska

Alaska's draft social consumption regulations require ventilation that can remove visible smoke and that is signed and approved by a licensed mechanical engineer.^V

Massachusetts

Generally, indoor smoking in public places is not permitted. However, G.L. c. 270, § 22 allows for the Department of Revenue to license smoking bars. A smoking bar is defined as:

^R Thomas and Freisthler, Examining the locations of medical marijuana dispensaries in Los Angeles, Drug Alcohol Review, 2017

^S <https://mass-cannabis-control.com/wp-content/uploads/2018/08/Municipal-Equity-Guidance-August-22.pdf>

^T <https://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Cannabis%20Consumption%20FAQ.pdf>

^U <https://www.pressherald.com/2018/03/15/cannabis-lounge-opens-in-san-francisco/>

^V <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=113809>

an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located; and, maintains a valid permit to operate a smoking bar issued by the department of revenue.^W

Additionally, on July 27, 2018, Governor Charlie Baker signed into law Chapter 157 of the Acts of 2018, *An Act protecting youth from the health risks of tobacco and nicotine addiction*^X. This law broadens existing prohibitions on public smoking to include the use of electronic cigarettes. While the concept of smoking bars would not be new in Massachusetts, marijuana does not currently fit within the legal definition provided above, therefore, social consumption may be limited to ingestion via electronic vaping and edibles.¹¹

Issue 4: Public Safety and Welfare

Debates on cannabis legalization rest on assumptions regarding the extent to which policies will lead to changes in consumption and the potential consequences of increased consumption, which are largely dependent on policy design and the demand for product.^{3,12-14} According to cannabis policy experts, legalization encompasses several policy options on the spectrum of prohibition to for-profit commercialization. These options are distinguished along the following dimensions: the types of entities permitted to provide cannabis; the regulations under which said entities operate; the nature of the products that may be distributed; and the price of products.¹⁵ Social consumption sites add another dimension of entities that permit adults to consume cannabis products on public premises, whether these entities are permitted to also sell products on their premises or not.

Theoretically, cannabis policy risks may mimic those associated with tobacco and alcohol policies, including public use and social consumption. The public health and safety concerns often include: high density of sites (dispensaries and possible social consumption sites), over-consumption, underage use, second-hand smoke or vapor, public impairment, cannabis-impaired driving, and crime, etc. The research examining these outcomes in states with medical and/or adult-use laws remains mixed or unstudied, likely due to the heterogeneity inherent in cannabis policy design and the nascence of the laws. Researchers reiterate that little is known about the impacts of cannabis policy and routinely call for increased research.^{3,16-20} If Massachusetts moves to license social consumption sites, research assessing their impact will be critical.¹

^W <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter270/Section22>

^X <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter157>

Issue 5: Social disparities

Sociological literature suggests that differential access to private space, such as homeownership, increased the likelihood that illegal behaviors, such as drug use, were detected.^J Thus, it is theoretically logical to project that legalizing cannabis use overall without also legalizing public consumption space may continue to disproportionately affect certain cohorts, such as persons of color and those unable to afford housing. In this regard, cannabis is not equally accessible across racial and socio-economic cohorts in the Commonwealth. The Commonwealth's enactment of laws permitting the adult use of cannabis may serve as an opportunity to address the disparate impact of some of the discriminatory policies and enforcement actions that disproportionately affected people of color. The war on drugs has been an important cause of rising racial disparities, contributing to differences in socio-economic status, criminal justice, public health, and health outcomes among racial cohorts in U.S. society. These policies have increased poverty, unemployment, and criminalization of those of Hispanic and African American origin.
21–23

In closing

The Commission may wish to study previously drafted social consumption regulations and consider the process of promulgating its own set of regulations on social consumption of marijuana in Massachusetts.^Y The Commission has committed^Z to addressing the following issues related to social consumption:

- Smoking/Vaping
- Operational Requirements
 - Preventing underage access
 - Impairment detection by server
 - Maximum consumption per visit
 - Maximum time on premise
- Impaired Operation

The Commission may also consider continuing the study of other jurisdictions, as the issue of social consumption is fluid.

^Y <https://mass-cannabis-control.com/wp-content/uploads/2018/02/Draft-Regulations-from-SEC.pdf>

^Z <https://mass-cannabis-control.com/wp-content/uploads/2018/03/032018-Commission-Meeting.pdf>

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