

HOSPITALITY INFORMATION MEMO

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Issues for Property Owners: What To Do About Cannabis?

On March 31, 2021, New York passed the Marijuana Regulation and Taxation Act (the Act), joining a growing number of states that have legalized the recreational use of cannabis for adults. The immediate change brought about by the Act was to legalize the possession, transportation and use of cannabis by adults over the age of 21. Many of the Act's provisions have yet to take effect as the Office of Cannabis Management (OCM) must issue specific regulations regarding the same. On June 8, 2022, OCM proposed [regulations for the home cultivation of cannabis for certified medical patients](#) (the Regulations), which will become effective in late July.

Cannabis legislation has raised numerous questions for property owners. One frequent question is whether property owners may prohibit individuals from smoking cannabis on the premises. Chances are, if smoking in a particular location is not already restricted in the Act, a simple "no smoking" policy will restrict both tobacco and cannabis use. Places where smoking cannabis is still restricted include private automobiles, schools, workplaces, bars, and indoor and outdoor areas of food service establishments. Additionally, hotel owners can ban the use and possession of cannabis on their properties.

The Regulations prohibit landlords from penalizing or refusing to lease to certified medical patients, which include anyone 21 or older with a valid registry identification card, solely on the basis of that person's lawful possession or use of cannabis. However, landlords with smoke-free policies in place on their property are not required to make an exception for recreational smoking of cannabis, though certified medical use must be accommodated. The Regulations also contain an exemption for landlords in instances where allowing medical cannabis use would cause the landlord to lose a monetary or licensing related benefit under federal law or regulations. One likely application of this exception is to public housing providers, where reimbursement is conditioned upon compliance with federal smoke-free regulations. Certifications from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) also require a tobacco-smoke-control policy that prohibits smoking.

Importantly, the Regulations only apply to certified medical patients and their designated caretakers, not to the general public. The OCM will be issuing regulations relating to the personal cultivation of cannabis for regular consumers no later than 18 months after the first authorized retail sale of cannabis. Until then, landlords are free to include any provisions prohibiting cannabis use for tenants without valid registry identification cards. Thereafter, all persons over the age of 21 will be eligible to: (i) store up to five pounds of cannabis at their private residences; and (ii) grow up to three mature and three immature cannabis plants at a time.

Another important and easy to overlook consideration for property owners is whether the terms of their mortgage prohibit cannabis consumption on the premises. Commercial mortgages from federally insured banks typically include a clause that prohibits the property owner from permitting or engaging in any illegal activities under local, state or federal law. Because marijuana remains classified as an illegal substance under federal law, permitting marijuana-related activities on the property could risk putting a property owner in default of their mortgage.

The legal landscape for cannabis regulation is continually evolving. While some questions may be answered when New York implements further regulations, the continuing conflict with federal law will remain a complicating factor.

If you have any questions about any of the information provided above or the cannabis industry in general, please contact [Jeffrey B. Scheer](#), [Dustin M. Dorsino](#) or the Bond attorney with whom you are regularly in contact.

