

**TREASURY-GENERAL**

**NEW JERSEY CANNABIS REGULATORY COMMISSION**

**Personal Use Cannabis Rules**

**Proposed Amendments: N.J.A.C. 17:30-1.2, 2.1, 5.1, 7.17, 9.5, and 9.8**

**Proposed New Rules: N.J.A.C. 17:30-14.9 and 14.10**

Authorized By: New Jersey Cannabis Regulatory Commission, Dianna Houenou, Chair.

Authority: N.J.S.A. 24:6I-31 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-008.

Submit written comments by March 18, 2023, electronically at: [www.nj.gov/cannabis/resources/cannabis-laws/](http://www.nj.gov/cannabis/resources/cannabis-laws/). Each comment should identify the commenter's name and affiliation. Alternatively, comments may be submitted by regular mail, postmarked by March 18, 2023, to:

Dave Tuason, Deputy Counsel  
New Jersey Cannabis Regulatory Commission  
225 East State Street, 2nd Floor  
Trenton, NJ 08608

The agency proposal follows:

**Summary**

As the New Jersey Cannabis Regulatory Commission (Commission) has provided a 60-day comment period on this notice of proposal, it is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

On December 16, 2019, the New Jersey State Legislature passed a resolution placing a Constitutional Amendment on the New Jersey Statewide ballot that, if ratified, would legalize the growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or that include cannabis, for persons 21 years of age and older. In accordance with the Constitutional Amendment, the Commission would oversee the new personal use cannabis market. The Commission was established in 2019 pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, N.J.S.A. 24:6I-1 et seq., to oversee the State's medical cannabis program.

On November 3, 2020, 67 percent of voters in New Jersey voted yes to ratify the legislatively referred Constitutional Amendment.

Governor Philip D. Murphy signed and made effective the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (Act), N.J.S.A. 24:6I-31 et seq., on February 2, 2021. The Act authorized, for the first time, the sale and personal use of products that contain useable cannabis or cannabis resin in New Jersey by persons 21 years of age or older and further directed the Commission to oversee the development, regulation, and enforcement of activities associated with the personal use of cannabis. To achieve this, the Act directed the Commission to “adopt rules and regulations prepared by the [C]ommission necessary or proper to enable it to carry out the [C]ommission's duties, functions, and powers with respect to overseeing the development, regulation, and enforcement of activities associated with the personal use of cannabis ...” (See N.J.S.A. 24:6I-34.d(1)(a)).

As a result, in accordance with N.J.S.A. 24:6I-34.d(1)(b), the Commission adopted the Personal Use Cannabis Rules at N.J.A.C. 17:30, effective August 19, 2021. The Act directs that these rules be adopted, amended, or readopted after consultation with the Attorney General, State Treasurer, and Commissioners of the New Jersey Department of Health and the Department of Banking and Insurance. The rules were scheduled to expire on August 19, 2022, pursuant to the Act at N.J.S.A. 24:6I-34.d(1)(b).

On June 30, 2022, the Commission filed its notice of proposed readoption of specially adopted new rules with amendments and new rules with the Office of Administrative Law, which was published in the New Jersey Register on August 1, 2022, at 54 N.J.R. 1470(a). Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Commission filed the notice of proposed readoption with the Office of Administrative Law prior to August 19, 2022, the expiration date was extended 180 days to February 15, 2023.

In addition to the proposed readoption of N.J.A.C. 17:30, the Commission is also proposing amendments and new rules relating to “cannabis consumption areas,” pursuant to N.J.S.A. 24:6I-21. This proposed rulemaking reflects consultation with the above-mentioned agencies, as well as other agencies and individuals who provided input to the Commission regarding the rules. A summary of the proposed new rules follows.

The Commission proposes adding a definition for a “cannabis consumption area” at N.J.A.C. 17:30-1.2.

The Commission proposes amending N.J.A.C. 17:30-2.1(b)2 to specifically include cannabis consumption areas.

The Commission proposes adding N.J.A.C. 17:30-5.1(n), which authorizes municipalities to allow the operation of a locally endorsed cannabis consumption area

through the enactment of an ordinance. The Commission proposes adding N.J.A.C. 17:30-5.1(o), which requires the municipality to determine whether a cannabis consumption area application complies with local restrictions.

The Commission proposes adding N.J.A.C. 17:30-7.17(d)20, 21, 22, and 23 to set forth the amounts for cannabis consumption area endorsement fees pursuant to N.J.S.A 24:6I-21.d.

The Commission proposes amending N.J.A.C. 17:30-9.5(a) to allow for on-premises consumption of cannabis items in its endorsed cannabis consumption area. The Commission proposes amending N.J.A.C. 17:30-9.5(b) to add that a medical cannabis dispensary or cannabis retailer shall not operate as a retail food establishment. Further, the Commission proposes adding N.J.A.C. 17:30-9.5(b)1 to allow for consumption of food brought by, or delivered to, qualifying patients, designated caregivers, or consumers in a cannabis consumption area, where allowed by law.

The Commission proposes adding N.J.A.C. 17:30-9.8(e) to require all personnel of cannabis retailers that operate a cannabis consumption area to complete any additional trainings required by the Commission.

The Commission proposes adding N.J.A.C. 17:30-14.9 to set forth the cannabis consumption area endorsement application process.

The Commission proposes adding N.J.A.C. 17:30-14.10 to set forth the cannabis consumption area conduct.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

## **Social Impact**

The Commission expects the new cannabis consumption area rules to have a beneficial social impact by advancing social equity, while allowing persons 21 years of age and older another venue to safely enjoy the personal use of cannabis.

The Commission expects the rules to advance social equity by promoting opportunities in New Jersey's cannabis industry for persons from statutorily designated target communities, specifically Social Equity Businesses; Diversely Owned Businesses; and Impact Zone Businesses, who receive priority review and approval in the application process. These businesses will be among the first in line to receive cannabis retailer licenses in the State and can subsequently apply for a cannabis consumption area endorsement.

The Commission additionally anticipates the rules to have a positive social impact by further promoting general public safety. The rules ensure that access to all cannabis consumption areas is restricted to adults at least 21 years of age. Additionally, the rules require that when a patient or consumer leaves a cannabis consumption area, any remaining unconsumed cannabis must be resealed with an exit package before it is carried out. Otherwise, any unconsumed cannabis is required to be destroyed. Finally, the rules require that cannabis retailers make a good faith effort to ensure that consumers and patients bring only regulated cannabis into cannabis consumption areas. To ensure the rules are being properly followed, the Commission is authorized to inspect cannabis retailers, issue notices of violations for regulatory infractions, and issue fines and suspend or revoke licenses, when deemed appropriate.

Finally, the Commission anticipates the new cannabis consumption area rules to have a positive social benefit by allowing, for the first time in New Jersey, the safe and legal personal use of cannabis in an authorized cannabis consumption area. As discussed in the Summary above, 67 percent of voters in New Jersey voted yes to ratify the Constitutional Amendment legalizing the personal use of cannabis products in New Jersey. With the amendments and new rules, residents of New Jersey may now join their fellow citizens consume cannabis together in a new regulated venue.

### **Economic Impact**

The new cannabis consumption area rules would have an economic impact on cannabis retailers that apply for a cannabis consumption area endorsement and are authorized by the municipality. Cannabis retailers that apply for an endorsement would incur costs associated with developing site plans and security measures, obtaining local approvals, and identifying personnel. Cannabis retailers would probably elect to retain the services of professionals to assist them in this process.

Upon the Commission granting an endorsement to a successful applicant, the cannabis retailer may incur costs associated with finalizing site construction and development, obtaining necessary local approvals, purchasing lighting, irrigation, and ventilation systems, hiring and training staff, procuring and installing equipment, and obtaining startup inventory. Cannabis retailers may also incur initial and ongoing costs associated with security and safety requirements, research activities, staff salaries, and record retention.

Further, the Commission anticipates that the new cannabis consumption area rules will result in an economic benefit for the residents of the State. The Commission expects

the State to generate tax revenues on the retail sales of incremental cannabis items used at consumption areas. Further, the Commission is authorized to collect application and renewal fees.

The Commission anticipates it would incur costs associated with the establishment and operation of the personal use cannabis market to implement the Act and the proposed amendments and new rules. In the first year, and in subsequent years of program operation, the Commission anticipates that it would incur costs associated with the salaries and benefits of personnel to administer the program, respond to consumer inquiries, and conduct compliance and enforcement activities. These costs could increase or decrease in subsequent years, depending on such factors as program demand, salary and staff changes, benefit costs, and the economy.

### **Federal Standards Analysis**

The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (Act) obliges the New Jersey Cannabis Regulatory Commission to promulgate rules necessary or proper to enable it to carry out the Commission's duties, functions, and powers with respect to overseeing the development, regulation, and enforcement of activities associated with the personal use of cannabis pursuant to P.L. 2021, c. 16. These duties include the regulation of the purchase, sale, cultivation, production, manufacturing, transportation, and delivery of cannabis or cannabis items in accordance with the provisions of the Act. Therefore, the Act requires the Commission to promulgate rules governing the regulated community's cultivation, possession, manufacture, sale, distribution, and use of cannabis.

The Controlled Substances Act, 21 U.S.C. §§ 801 et seq., prohibits the cultivation, distribution, and possession of marijuana or cannabis, for any reason, regardless of state law. 21 U.S.C. §§ 841 et seq. The proposed amendments and new rules on cannabis consumption areas anticipate that members of the regulated community would possess cannabis, and may engage in certain financial activities that are ancillary to cultivation, distribution, and possession of cannabis. These ancillary financial activities may constitute prohibited conduct under other Federal criminal and civil laws, such as the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act (BSA). 18 U.S.C. §§ 1956 through 1957, and 1960; and 31 U.S.C. § 5318.

Therefore, the new cannabis consumption area rules will conflict with Federal law. Members of the regulated community who engage in activities contemplated by the Act might incur Federal civil and criminal liability. N.J.S.A. 24:6I-2.d notes that “States are not required to enforce [Federal] law or prosecute people for engaging in activities prohibited by [Federal] law; therefore, compliance with [the Act] does not put the State of New Jersey in violation of [Federal] law,” and N.J.S.A. 24:6I-54 further directs law enforcement in New Jersey to not cooperate with Federal agencies enforcing the Controlled Substances Act for activities solely authorized by the Act.

Between October 2009 and late October 2014, the United States Department of Justice (Justice Department) issued a series of formal memoranda to United States Attorneys to guide their exercise of investigative and prosecutorial discretion in states enacting laws authorizing the cultivation, distribution, and possession of marijuana, for medicinal and/or personal use purposes. David W. Ogden, Deputy Attorney Gen., Memorandum for Selected United States Attorneys: Investigations and Prosecutions in



States Authorizing the Medical Use of Marijuana (October 19, 2009); James M. Cole, Deputy Attorney Gen., Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (June 29, 2011); James M. Cole, Deputy Attorney Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (August 29, 2013); James M. Cole, Deputy Attorney Gen., Memorandum for All United States Attorneys: Guidance Regarding 32 Marijuana Related Financial Crimes (February 14, 2014); and Monty Wilkinson, Director of the Executive Office for United States Attorney's, Policy Statement Regarding Marijuana Issues in Indian Country (Oct. 28, 2014). While noting the Justice Department's commitment to enforcing the Controlled Substances Act, these guidance memoranda instructed United States Attorneys to focus on the following eight enforcement interests in prioritizing the prosecution of Federal laws criminalizing marijuana-related activity in states that have enacted laws authorizing marijuana-related conduct:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal in some form under state law to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;

6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property. Cole (August 29, 2013), *Id.*, at 1-2.

The memoranda encouraged United States Attorneys to continue to rely on states that have enacted laws authorizing marijuana-related conduct to address marijuana-related activity through enforcement of state controlled substances laws, if those states “provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine” the eight Federal enforcement priorities, *Id.*, at 2-3, and “implement clear, strong and effective regulatory and enforcement systems in order to minimize the threat posed” to the eight Federal enforcement priorities. Cole (February 14, 2014), *Id.*, at 3. The memoranda noted that persons and entities engaged in marijuana-related activities “are more likely to risk entanglement with conduct that implicates the eight [Federal] enforcement priorities” in states that lack “clear and robust” regulatory schemes and enforcement systems. *Ibid.*

In guidance issued concurrently with Deputy United States Attorney General Cole’s February 14, 2014, memorandum on marijuana-related financial crime enforcement priorities, *ibid.*, the Financial Crimes Enforcement Network (FinCEN) of the United States Department of the Treasury (Treasury Department) issued a companion guidance document that “clarifies how financial institutions can provide services to

marijuana-related businesses consistent with their Bank Secrecy Act (BSA) obligations, and aligns the information provided by financial institutions in BSA reports with [Federal] and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.” FinCEN, United States Department of the Treasury, Guidance FIN-2014-G001: BSA 34 Expectations Regarding Marijuana-Related Businesses (February 14, 2014) (FinCEN Guidance).

The FinCEN Guidance emphasizes that financial institutions’ exercise of thorough due diligence is critical to their assessment of the risk of providing services to marijuana-related businesses, and specifies tasks financial institutions should perform as part of their due diligence, noting that as “part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the [eight Federal enforcement] priorities or violates state law.” *Id.*, at 2-3. The FinCEN Guidance identifies the types of required “Suspicious Activity Report” and “Currency Transaction Report” filings that financial institutions are to make attendant to their engagement with marijuana-related businesses, and provides a non-exhaustive list of “red flags” or indicia that could give rise to a financial institution’s suspicion, or actual or constructive knowledge, “that a marijuana-related business may be engaged in activity that implicates one of the [eight Federal enforcement] priorities or violates state law,” thereby triggering the financial institution’s obligations to perform additional due diligence investigation and/or file a “Marijuana Priority” Suspicious Activity Report. *Id.*, at 3-7.

On January 4, 2018, the Justice Department issued a memorandum to all United States Attorneys, instructing them that, in “deciding which marijuana activities to

prosecute under [applicable Federal] laws with the [Justice] Department's finite resources, to follow the well-established principles that govern all [Federal] prosecutions as reflected in the United States Attorneys' Manual. These principles require [Federal] prosecutors deciding which cases to prosecute to weigh all relevant considerations, including [Federal] law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community. Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately." Jefferson B. Sessions, III, Attorney Gen., Memorandum for All United States Attorneys: Marijuana Enforcement (January 4, 2018) (Sessions Memorandum) (specifically listing, at n.1, the 2009 through 2014 Justice Department Memoranda, discussed above, as rescinded). The Sessions Memorandum neither identified the "law enforcement priorities set by the Attorney General" that United States Attorneys were to consider instead of the eight Federal enforcement priorities announced in the rescinded Justice Department Memoranda, nor did it explain whether and how those sets of priorities might differ. However, the press release accompanying its issuance characterized the Sessions Memorandum as "announcing a return to the rule of law," and quoted Attorney General Sessions as saying that the Sessions Memorandum "simply directs all [United States] Attorneys to use previously established prosecutorial principles that provide them all the necessary tools to disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime across our country." Office of Public Affairs, Justice Department, Press Release No. 18-8: Justice Department Issues Memo on Marijuana Enforcement (January 4, 2018). The Treasury Department did not

issue guidance, concurrent with the issuance of the Sessions Memoranda, or thereafter, rescinding its FinCEN Guidance. Therefore, the FinCEN Guidance appears to remain extant.

While there has been no new guidance released from the Justice Department since the Sessions Memorandum, Attorney General Merrick Garland, twice provided testimony to Congress in 2021, where he reiterated the spirit of the Cole Memorandum and its commitment to deprioritizing Federal enforcement against persons and entities complying with state law in a state with a well-regulated cannabis program. He stated: “I do not think it the best use of the [Justice] Department’s limited resources to pursue prosecutions of those who are complying with the laws in states that have legalized and are effectively regulating marijuana.” Senate Committee on the Judiciary, Responses to Questions for the Record to Judge Merrick Garland, Nominee to be United States Attorney General (February 28, 2021); Senate Committee on the Judiciary, Hearing on the Nomination of the Honorable Merrick Brian Garland to be Attorney General of the United States (February 22, 2021); House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, Hearing on the Fiscal Year 2022 Budget Request for the Department of Justice (May 4, 2021).

Additionally, existing Federal budget laws protect and safeguard state-administered legal medicinal marijuana programs. The Blumenauer amendment (previously known as the Rohrabacher-Farr amendment), most recently sponsored by United States Representative Earl Blumenauer (D-OR), prevents the Justice Department from using Federal funds to prosecute state-compliant medical marijuana operators in

states that have legal cannabis programs. It was first approved in 2014, and has been approved or renewed by Congress more than 29 times since.

The new cannabis consumption area rules adhere to the standards outlined in the Cole Memorandum. The rules require stringent security standards for cannabis retailers and further enforce the Act's prohibition on the sale of cannabis to anyone under the age of 21.

### **Jobs Impact**

The Commission evaluated this rulemaking to determine the impact of the new cannabis consumption areas rules in the generation or loss of jobs in the State. The Commission anticipates that the authorization of cannabis consumption areas would most likely lead to the creation of jobs, as cannabis retailers who apply for an endorsement would most likely require additional staff to appropriately ensure consumer safety. The Commission is unable to estimate the number of positions cannabis retailers would need to fill to perform these functions as this will depend on how many municipalities authorize cannabis consumption areas and how many cannabis retailers apply for an endorsement.

### **Agricultural Industry Impact**

Pursuant to N.J.S.A. 52:14B-4, the Commission has evaluated this rulemaking to determine the nature and extent of the impact of the rules on cannabis consumption areas on the agricultural industry. The Commission anticipates that the addition of cannabis consumption areas will have an impact on the agriculture industry in New Jersey in that it may create additional demand for personnel to cultivate and process cannabis and agricultural supplies and equipment. The extent of the impact on the agriculture industry

in New Jersey, however, will depend on factors, such as whether cannabis consumption areas will create incremental demand for cannabis by enticing new users.

### **Regulatory Flexibility Analysis**

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission has evaluated the reporting, recordkeeping, and other compliance requirements that the new cannabis consumption area rules and proposed amendments impose upon small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business that is a resident in this State, independently owned and operated and not dominant in its field, and that employs fewer than 100 full-time employees.” None of the compliance requirements in the rules increase or decrease current requirements governing any business, regardless of size, and, therefore, will not affect any existing small business.

The Commission expects that the rules will affect small businesses only to the extent that a new small business, that has received a cannabis retailer license seeks to apply for a cannabis consumption area endorsement as contemplated by the Act. The rules are consistent with and implement the statutory directive of the Act and are not considered overly burdensome. The Commission has determined that the rules establish the minimum standards necessary to ensure the health and safety of consumers, the employees and neighbors of cannabis retailers, and the public generally; to prevent abuse and ensure compliance with applicable law; and to maintain public confidence in the cannabis industry.

The rules establish compliance requirements applicable to cannabis retailers seeking to apply for a cannabis consumption area endorsement. These retailers could

qualify as small businesses within the meaning of the Regulatory Flexibility Act. The Commission is unable at this time, however, to estimate the number of retailers that will apply for a cannabis consumption endorsement pursuant to the rules and is unable to estimate how many of these would be small businesses within the meaning of the Regulatory Flexibility Act. The number of businesses will depend on factors such as consumer demand for cannabis and the number of applications for an endorsement received and approved by the Commission.

Consumption area endorsement fees are structured to be affordable for small businesses, specifically microbusinesses, as low as \$1,000 for the initial and renewal fee, compared to \$5,000 for a standard cannabis business. The fee structure is designed to account for the size of the business operations, the value or size of a business's anticipated market share, and the costs to manage applications and enforce industry compliance.

### **Housing Affordability Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, the Commission has evaluated the proposed amendments and new rules to determine their impact, if any, on the affordability of housing. The rules on cannabis consumption areas relate to the activities associated with the personal use of cannabis and neither impose requirements, nor confer direct benefits onto homeowners, builders, or other providers of housing, making it unlikely that they will have an impact on the affordability of housing units or result in a change in the average costs of housing.

### **Smart Growth Development Impact Analysis**



In accordance with N.J.S.A. 52:14B-4, the Commission has evaluated the rules on cannabis consumption areas to determine their impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The new rules on cannabis consumption areas relate to the activities associated with the personal use of cannabis, making it unlikely that they will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Commission has determined that the proposed new rules on cannabis consumption areas would not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults or juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **17:30-1.2 Definitions**

(a) (No change.)

(b) The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

**“Cannabis consumption area” means, as further described at N.J.S.A. 24:6I-21, a designated location operated by a permitted medical cannabis dispensary or a licensed Class 5 Cannabis Retailer, for which a State and local endorsement has been obtained, at which medical or personal-use cannabis items may be consumed, that is either:**

**1. An indoor, structurally enclosed area of the medical cannabis dispensary, cannabis retailer that is separate from the area in which the dispensing of medical cannabis or retail sales of cannabis items occurs; or**

**2. An exterior structure on the same premises as the medical cannabis dispensary, cannabis retailer, either separate from or connected to the cannabis retailer.**

...

SUBCHAPTER 2. CONSUMER AND LICENSE HOLDER PROTECTIONS;

CONSUMER PROHIBITIONS

**17:30-2.1 Consumer and license holder criminal protections**

(a) (No change.)

(b) It is not unlawful, pursuant to N.J.S.A. 2C:35-10.a[.] for:

1. (No change.)

2. A consumer to take delivery of, or consume, a lawfully possessed cannabis item in a place where it is not prohibited to do so, **including to smoke, vape, or aerosolize a cannabis item in a cannabis consumption area as set forth at N.J.S.A. 24:6I-21 and N.J.A.C. 17:30-14.9 and 14.10, or in a guest room at a hotel,**

**motel, or other lodging establishment, as defined at N.J.S.A. 29:4-5, that permits such consumption, smoking, vaping, or aerosolizing; or**

3. (No change.)

## **SUBCHAPTER 5. MUNICIPAL AUTHORITY**

### **17:30-5.1 Municipal authority**

(a)-(m) (No change.)

**(n) A municipality may authorize or prohibit, through the enactment of an ordinance or regulation, the operation of a locally endorsed cannabis consumption area, including a cannabis consumption area operated by an alternative treatment center.**

**1. Such ordinance or regulation shall not conflict with the Act or this chapter and may govern the location, manner, and times of operations of consumption areas; and**

**2. Such ordinance may include a reasonable minimum distance from schools, child daycare facilities, playgrounds, and places of worship where the municipality allows cannabis consumption areas to locate.**

**(o) If a municipality allows cannabis consumption areas, after receiving a cannabis consumption area application from the Commission, the municipality shall determine whether the application complies with its local restrictions on cannabis consumption areas and shall inform the Commission of its determination in a manner specified by the Commission on its website at <https://www.nj.gov/cannabis>.**

SUBCHAPTER 7. CANNABIS BUSINESS CONDITIONAL AND ANNUAL LICENSING  
PROCESS

**17:30-7.17 Cannabis business and testing laboratory fees**

(a)-(c) (No change.)

(d) The following licensing fees shall be paid by license applicants or license holders, as applicable:

1.- 18. (No change.)

**19. (Reserved)**

**20. Cannabis consumption area endorsement application submission fee**

**\$200**

**21. Cannabis consumption area endorsement application approval fee**

**\$800**

**22. Microbusiness cannabis consumption area endorsement initial or renewal licensing fee \$1,000**

**23. Standard cannabis consumption area endorsement initial or renewal licensing fee \$5,000**

(e)-(m) (No change.)

**(Agency Note:** In a separate rulemaking (see 54 N.J.R. 1470(a)), the Commission proposed to amend N.J.A.C. 17:30-9.5 and such amendments will be adopted prior to the adoption of the amendments proposed in this rulemaking at subsection (b). The language below does include the changes in the prior rulemaking (additions proposed in

the prior rulemaking indicated herein in underline and italics *thus*; deletions proposed in the prior rulemaking are indicated herein in italicized cursive braces *{thus}*, as they are not yet permanent text in the New Jersey Administrative Code; however, the changes must be shown for the instant amendments to make sense. The italicized, underlined text is not subject to comment in this notice of proposal.)

## **SUBCHAPTER 9. CANNABIS BUSINESS LICENSE HOLDER MATERIAL CONDITIONS AND REQUIREMENTS**

### **17:30-9.5 Prohibitions applicable to a cannabis business**

(a) A license holder shall not allow any cannabis item or alcohol to be consumed on the premises or administrative offices of the cannabis business, or in public areas in the vicinity of such premises or administrative offices, **except cannabis items may be consumed in a cannabis consumption area.**

(b) [Sales] **A medical cannabis dispensary or cannabis retailer shall not operate as a retail food establishment, as defined at N.J.A.C. 8:24-1.5, and the sale of food, beverages, alcohol, or tobacco on the premises of a cannabis business are prohibited{.};** except that sales of food to personnel of such cannabis business on the premises in an area separated from the physical plant, such as an employee break room; or consumption of food brought by or delivered to, qualifying patients, designated caregivers, or consumers in a cannabis consumption area are permitted, where allowed by law.

(c)-(e) (No change.)

### **17:30-9.8 Cannabis business training**

(a)-(d) (No change.)

**(e) All personnel of a cannabis retailer or medical cannabis dispensary that operates a cannabis consumption area shall complete any additional trainings required by the Commission.**

**(Agency Note:** N.J.A.C. 17:30-12 is proposed for recodification as N.J.A.C. 17:30-14 in a separate rulemaking (see 54 N.J.R. 1470(a)), the two new sections that follow are proposed to be added to existing N.J.A.C. 17:30-12, which will be recodified as N.J.A.C. 17:30-14 upon adoption of the prior rulemaking, which will take place prior to the adoption of this rulemaking.)

## **SUBCHAPTER 14. CANNABIS RETAILER AUTHORIZED CONDUCT**

### **17:30-14.9 Cannabis Consumption Area Endorsement Application Process**

**(a) A medical cannabis dispensary or cannabis retailer may operate a cannabis consumption area in accordance with N.J.S.A. 24:6I-21 and this chapter upon receiving an endorsement from the Commission and the municipality in which it is located.**

**(b) To apply for a cannabis consumption area endorsement, the medical cannabis dispensary or cannabis retailer shall submit an application meeting the requirements at N.J.S.A. 24:6I-21 and this section to the Commission.**

**1. Each applicant shall submit, along with the application, an oath or attestation that the information provided in the application is true and accurate.**

**(c) Within 14 days of receipt of a complete cannabis consumption area endorsement application, the Commission shall forward a copy of the application to the municipality in which the cannabis consumption area is to be located, unless the municipality has prohibited the operation of cannabis consumption areas.**

**(d) Within 28 days of receipt of a complete cannabis consumption area endorsement application, the municipality shall determine whether the application complies with its local restrictions on cannabis consumption areas and receives its endorsement and shall inform the Commission of its determination.**

**(e) After the receipt of the determination of the municipality on whether the application complies with local restrictions and receives a municipal endorsement, the Commission shall make a determination on the completed application.**

**1. Such determination may include a determination that the Commission requires more time to adequately review the application.**

**2. If the municipality denies the application for, or revoke, the municipal endorsement, the Commission shall deny or revoke the State endorsement;**

**(f) The Commission may deny an application for or the renewal of a State cannabis consumption area endorsement, or suspend or revoke a cannabis consumption area endorsement or Class 5 Cannabis Retailer license, under one or more of the following conditions:**

**1. The cannabis consumption area operator has not submitted the requisite application or licensing fees pursuant to N.J.A.C. 17:30-7.17;**

**2. The premises on which the applicant proposes to conduct its business does not meet the requirements of the Jake Honig Compassionate Use Medical Cannabis Act, P.L. 2009, c. 307 (N.J.S.A. 24:6I-1 et seq.) or the Act, as applicable, or this chapter; or**

**3. There is a reason for denial or revocation set forth at N.J.S.A. 24:6I-21, including “good cause.”**

**i. For the purpose of this paragraph, “good cause” means:**

**(1) The endorsed applicant, permit holder, or license holder has violated, does not meet, or has failed to comply with, any of the terms, conditions, or provisions at N.J.S.A. 24:6I-21, this chapter, and any other rules promulgated pursuant to N.J.S.A. 24:6I-21, or any supplemental local laws, rules, or regulations;**

**(2) The endorsed applicant, permit holder, or license holder has failed to comply with any special terms or conditions that were placed on its endorsement by the Commission or municipality; or**

**(3) The premises have been operated in a manner that adversely affects the public health or the safety of qualifying patients, consumers, personnel of the medical cannabis dispensary, cannabis retailer, the general public, or the immediate neighborhood in which the consumption area is located.**



**(g) If the Commission denies an application for, or revokes, a State cannabis consumption area endorsement, the Commission shall provide the applicant with written notice of the denial or revocation and the specific reason for the denial or revocation.**

**(h) Any Commission decision made to approve or deny a State cannabis consumption area endorsement application pursuant to N.J.S.A. 24:6I-21 or this section shall be considered a final agency decision for the purposes of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., subject to judicial review by, and of which jurisdiction and venue for such review are vested in, the Appellate Division of the Superior Court, pursuant to N.J.A.C. 17:30-17.9.**

**(i) Any person aggrieved by the municipal denial of an endorsement application or municipal revocation of an endorsement may request a hearing in the Superior Court of the county in which the application was filed.**

**1. The request for a hearing shall be filed within 30 days after the date of the municipal denial of the application.**

**2. The person shall serve a copy of the person's request for a hearing upon the appropriate officer for the municipality that denied the application or revoked the endorsement.**

**3. The hearing shall be held, and a record made thereof, within 30 days after the receipt of the request for a hearing.**

**4. No formal pleading and no filing fee shall be required for the hearing.**

**(j) A cannabis consumption area endorsement shall be valid for one year and may be renewed annually, subject to the approval of the Commission and the municipality as set forth at N.J.S.A. 24:6I-21 and this chapter.**

**(k) The Commission shall maintain a list of all cannabis consumption areas in the State and shall make the list available on its Internet website.**

#### **17:30-14.10 Cannabis consumption area conduct**

**(a) It shall not be unlawful and it shall be permitted for a qualifying patient or consumer to consume, smoke, vape, or aerosolize in the cannabis consumption area medical cannabis or cannabis items, as applicable, pursuant to N.J.S.A. 24:6I-21 and this section.**

**1. All cannabis consumption areas shall allow registered patients who are at least 21 years of age to consume medical cannabis.**

**(b) An indoor cannabis consumption area:**

**1. Shall be a structurally enclosed area within a medical cannabis dispensary or cannabis retailer facility, separated by solid walls or windows from the area in which medical cannabis is dispensed or retail sales of cannabis items occur;**

**2. Shall only be accessible through an interior door after first entering the dispensary or retailer facility; and**

**3. Shall comply with all ventilation requirements applicable to cigar lounges, as that term is defined at N.J.S.A. 26:3D-57, in order to permit indoor smoking, vaping, or aerosolizing of medical cannabis or cannabis items that is**

**the equivalent of smoking tobacco not in violation of the New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-55 et seq.**

**(c) An outdoor cannabis consumption area:**

**1. Shall be an exterior area on the same premises as the medical cannabis dispensary or cannabis retailer that is either separate from or connected to the dispensary or retailer;**

**2. Is not required to be completely enclosed, but shall have sufficient walls, fences, or other barriers to prevent any reasonable view from any sidewalk or other pedestrian or non-motorist right-of-way of patients or consumers consuming medical cannabis or cannabis items, as the case may be, within the consumption area; and**

**3. Shall ensure that any smoking, vaping, or aerosolizing of medical cannabis or cannabis items that occurs in the area does not result in migration, seepage, or recirculation of smoke or other exhaled material to any indoor public place or workplace as those terms are defined at N.J.S.A. 26:3D-57, which includes the use of any ventilation features the Commission deems necessary and appropriate.**

**(d) A medical cannabis dispensary or cannabis retailer operating a cannabis consumption area:**

**1. Shall possess both a current State and municipal endorsement in order to operate;**

**2. Shall only operate one cannabis consumption area, regardless of the number of Class 5 Cannabis Retailer licenses held by the cannabis retailer;**

**3. Shall designate the cannabis consumption area by conspicuous signage, which shall indicate that the cannabis consumption area may be used for the on-premises consumption of medical cannabis and personal use cannabis items;**

**4. Shall not sell or allow the consumption of any alcohol, including fermented malt beverages or malt, vinous, or spirituous liquor, or tobacco or nicotine products on the premises;**

**5. Shall not operate as a retail food establishment as defined at N.J.A.C. 8:24-1.5;**

**6. May transfer medical cannabis or cannabis items purchased by a qualifying patient or consumer in its retail establishment to that patient or consumer in its cannabis consumption area;**

**7. Shall limit the amount of medical cannabis or cannabis items sold to a person to be consumed in its consumption area, or brought into its consumption area if permitted pursuant to (e) below, to no more than the sales limits at N.J.S.A. 24:6l-10.f and N.J.A.C. 17:30-14.3(d).**

**i. A medical cannabis dispensary or cannabis retailer shall not engage in multiple sales transactions of medical cannabis or cannabis items to the same person during the same business day when a retailer's or dispensary's personnel knows, or reasonably should have known, that the sales transaction would result in the person possessing more than the sales limits established by the Commission;**

**8. Shall provide information regarding the safe consumption of medical cannabis or cannabis items at the point of sale to all persons who make a purchase, as well as to all persons entering the cannabis consumption area;**

**9. Shall not allow on-duty personnel of the establishment to consume any medical cannabis or personal use cannabis items in the consumption area, other than on-duty personnel who are registered qualifying patients, if the medical cannabis dispensary or cannabis retailer does not otherwise provide reasonable accommodations in a private area for that person to use medical cannabis;**

**10. Shall restrict access to a cannabis consumption area to personnel of the medical cannabis dispensary or cannabis retailer, adults who are at least 21 years of age, and registered qualifying patients and designated caregivers who are at least 21 years of age;**

**11. Shall require each person, in order to enter the consumption area to produce a form of government-issued photo identification that may be accepted pursuant to N.J.S.A. 24:6I-35.a(6)(a) and N.J.A.C. 17:30-14.3(a) to prove they are at least 21 years of age;**

**12. Shall not distribute or allow others to distribute free cannabis samples on the premises of the cannabis business;**

**13. Shall ensure, when a patient or consumer leaves a cannabis consumption area, that any remaining unconsumed medical cannabis or cannabis item that is not carried out with the patient, the patient's designated caregiver, or the consumer is destroyed;**

**i. When patients or consumers carry out medical cannabis or cannabis items that can no longer be resealed in accordance with N.J.A.C. 17:30-16.2(f)4, the medical cannabis dispensary or cannabis retailer shall provide the patient or consumer with an exit package that complies with N.J.A.C. 17:30-16.2 to store their unused cannabis items or medical cannabis, as applicable;**

**14. Shall not sell or serve additional cannabis items to a consumer who displays visible signs of intoxication and shall not permit the additional use or consumption of cannabis by a consumer who displays visible signs of intoxication; and**

**15. Shall make good faith efforts to ensure that consumers, patients, and caregivers bring only regulated medical or personal-use cannabis items into the cannabis consumption area.**

**(e) A medical cannabis dispensary or cannabis retailer with a cannabis consumption area, and its personnel may permit a person to bring personal-use cannabis items into a cannabis consumption area, as long as the on-premises consumption of that cannabis is authorized by the endorsement received by the medical cannabis dispensary or cannabis retailer. A medical cannabis dispensary or cannabis retailer with a cannabis consumption area may not prohibit a person from bringing medical cannabis items to a consumption area.**

**(f) If an emergency requires law enforcement personnel, firefighters, emergency medical services providers, or other public safety workers to enter a cannabis consumption area, the medical cannabis dispensary or cannabis retailer shall prohibit on-site consumption of medical cannabis and cannabis items until such**

**public safety workers have completed their investigation or services and have left the premises.**