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Viva Las Lounges: No, You Still Can't Consume MJ Like Alcohol in Vegas

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The State of Nevada's Cannabis Compliance Board is set to open the application window for licensing marijuana consumption lounges across the state on October 14. The application window will only be open for 10 business days (through October 27) and the deputy director of the Cannabis Compliance Board has already clarified that this will be the ONLY time to apply. With the Las Vegas city council recently voting 5-1 to deny Councilwoman Victoria Seaman's motion to opt out of allowing marijuana consumption lounges, Sin City's legal vices are about to go up.

The quick approval of licensing is novel in the cannabis regulatory space, even for Nevada, which allows marijuana businesses to advertise on billboards and taxi's driving on the strip and to/from the airport. Nevada's legislature approved marijuana consumption lounges on June 4, 2021. Now, license applications are set to open, and the Cannabis Compliance Board is anticipating issuing up to 45 licenses to current dispensaries, and 20 licenses to standalone lounges, half of which will go to social equity applicants. Consumption lounges in and of themselves are progressive. As a point of comparison, Colorado, the first state to legalize adult use marijuana in 2012, legalized marijuana consumption lounges (called "marijuana hospitality establishments") in May of 2019, and the first lounge was approved March 21, 2022. As of today, only 8 licenses have been approved, and maybe a handful are operational.

Tourists in Las Vegas will finally have somewhere to consume marijuana "legally" rather than in their hotel rooms, hotel balconies, or hotel parking lots. These limited options are less than optimal. However, while tourists will be able to enjoy consumption lounges, the same cannot be said about all local residents. While state law restricts pre-employment drug testing for marijuana use, a recent case decided by the Supreme Court of Nevada upheld an employer's right to terminate an employee for off-duty marijuana consumption. In *Danny Ceballos v. Palace Station Hotel & Casino*, Mr. Ceballos slipped and fell in the employee breakroom on June 25, 2020, and Palace Station required him to submit to a drug test. The test came back positive for marijuana and Mr. Ceballos was subsequently terminated. While Mr. Ceballos was not intoxicated or impaired during his June 25 shift, his off-duty consumption of marijuana cost him his job. In

essence, in Nevada, and some other states like Colorado, employees can be terminated for their off-the-job marijuana use. Some states, like New York and recently, California with the passage of Assembly Bill 2188, have statutorily protected employees from termination or drug testing for marijuana use.

The Nevada Supreme Court's decision sheds light on the inherent irony in the comparison of how we as a country regulate marijuana versus alcohol. Conceptually, states that have legalized adult use of marijuana have done so under the guise of wanting to regulate marijuana like alcohol. But is that really what's going on, or are we regulating more like plutonium? In Las Vegas, you can legally consume alcohol in casinos (and in fact are encouraged to do so), and you can consume in public view—out in the open on the busy strip at all hours of the night. Despite alcohol-friendly consumption policies, heaven forbid you get caught smoking a joint out in the casino or on the strip!

Unlike alcohol, marijuana consumption will only be authorized at specific, limited locations **and** outside of public view. Basically, Nevada has approved legal marijuana speakeasys where you are forced to consume in a backroom or basement with blacked-out windows. In fact, the regulations recently approved by the Cannabis Compliance Board expressly require that the display and consumption of marijuana not be visible from outside of the licensed premises. And while outdoor areas are allowed, all marijuana is kept out of plain sight and not visible from a public place and surrounded by a “sight-obscuring wall, fence, or other opaque or translucent barrier.” It doesn't seem like we are treating marijuana like other vices allowed in Vegas.

No, unlike alcohol, marijuana consumption is still something regulators prefer we hide behind closed doors, and the regulations preserve and perpetuate the stigma. Instead, what the regulations are saying, generally speaking, is “You can consume marijuana. We just don't want to see it.”

Foundationally, this move is a step in the right direction. Well done, Nevada and the City of Las Vegas. However, we should question if this change goes far enough. Unfortunately, the reality is that the expansion of the marijuana industry in the United States is still handcuffed by the barriers of federal prohibition. Until federal prohibition in this country has ended and marijuana is removed from the list of controlled substances, only so much progress can be made. Regardless, we are happy to no longer have to clandestinely utilize a Las Vegas casino parking lot on our next visit.

Rachel Gillette, Holland & Hart partner and leader of the firm's Cannabis group, was one of the country's first lawyers to dedicate her practice to cannabis law. Nationally ranked as a Band 1 cannabis lawyer in Chambers USA, Rachel has over a decade of experience helping clients navigate complex regulatory, financial, and operational challenges. She works with startups, established cannabis operations, investors, and ancillary

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