

INDUSTRY ADVISORY

Cannabis and Alcoholic Beverages

With the legalization of commercial recreational use of cannabis and cannabis products commencing in 2018, along with the licensed manufacture and sale, a number of questions have arisen about what activities are permissible on or in premises licensed by the Department of Alcoholic Beverage Control to manufacture or sell alcoholic beverages. The following frequently asked questions and responses are intended to offer some guidance. This is not intended to be a comprehensive review of what may be permitted or prohibited. You should obtain independent legal advice before engaging in business involving either alcoholic beverages or cannabis, and you should not act in reliance on any information presented herein.

1. Can I hold both an ABC license and a license to grow, process, or sell cannabis?

Yes. Neither the Alcoholic Beverage Control (“ABC”) Act nor the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) prohibit persons from holding licenses to manufacture or sell alcoholic beverages from holding a license authorized under the MAUCRSA. Applicants for ABC licenses will still need to meet all ABC licensing requirements, independently of any other licensing authority under the MAUCRSA.

2. If I hold licenses under both the ABC Act and the MAUCRSA, can I sell alcoholic beverages and cannabis at the same location?

No. The MAUCRSA (Business and Professions Code section 26054) states that the holder of a license issued under the MAUCRSA “shall not sell alcoholic beverages or tobacco products on or at any premises licensed under this division.” (Note: Section 26038 provides that any person engaging in commercial cannabis activity without a license is in violation of the MAUCRSA and subject to criminal and civil penalties.)

In addition, Section 5026(c) of the Bureau of Cannabis Control (“BCC”) regulations (Title 16, Cal. Code of Regs., section 5026) provides: “A premises shall not be in a location that requires persons to pass through a business that sells alcohol or tobacco to access the licensed premises, or that requires persons to pass through the licensed premises to access a business that sells tobacco or alcohol.”

Commercial cannabis may only be cultivated, processed, stored, or sold at premises licensed pursuant to the MAUCRSA. Due to the restrictions on licensing and permissible activities, premises may not be licensed with both an ABC license and a license issued under MAUCRSA, even though a licensee may hold licenses (at separate premises) under both statutory schemes.

3. Although I cannot sell cannabis in my bar or restaurant licensed by ABC, can I allow consumers to bring their own cannabis onto the premises and consume it?

No. Health and Safety Code section 11362.3 prohibits the smoking or ingesting of cannabis or cannabis products in a public place, except as authorized under Business and Professions Code section 26200.

Businesses (including premises authorizing the sale or consumption of alcoholic beverages under both retail and non-retail licenses) licensed under the ABC Act are considered “public places” for this purpose (this also includes premises licensed under club licenses, or any other premises to which entry may otherwise be limited). This restriction applies even if the ABC licensee is not exercising the privileges of the license, such as after hours, while closed, or if the ABC license is surrendered or suspended.

Although there are exceptions under Business and Professions Code section 26200 allowing for public consumption of cannabis and cannabis products, the sale or consumption of alcoholic beverages in the same area is expressly prohibited. (See, also, BCC regulations 5602 and 5603 regarding temporary cannabis event sales and consumption—the consumption of alcoholic beverages is prohibited on the premises.)

4. I have seen news articles talking about wine, food, and cannabis pairing events (or similar such activities). Are these types of events allowed?

No. Not in premises licensed under the ABC Act. As indicated above, public consumption of cannabis and cannabis products is prohibited. Even if one of the exceptions applies, alcoholic beverages are still not allowed to be sold or consumed. “Public consumption” is not limited to smoking; it also includes the consumption of edible cannabis products. As such, it would also be a violation for an ABC licensee to use cannabis or cannabis products in the preparation of food items for consumption on the premises.

5. Can I infuse (or mix) alcoholic beverages with cannabis (either as a manufacturer or retailer)?

No. There are two specific reasons why this is not permitted. First, since cannabis cannot be sold in the same premises as alcoholic beverages, any product that contains both cannabis and beverage alcohol cannot be sold at premises licensed with either an ABC license or a MAUCRSA license. (See FAQ # 2.) Second, regulations issued by the California Department of Public Health prohibit the sale of “edible cannabis products” as alcoholic beverages. (Title 17, Cal. Code of Regs., section 40300.)

6. Am I allowed to sell or use at my ABC-licensed premises CBD or CBD products derived from industrial hemp?

No. The California Department of Public Health, Food and Drug Branch, has issued a memorandum (dated July 6, 2018) detailing the legal status and use of cannabidiol (CBD) oil or CBD products in food, which includes alcoholic beverages. This memorandum states, in part:

“Currently, the United States Food and Drug Administration (FDA) has concluded that it is a prohibited act to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which tetrahydrocannabinol (THC) or CBD has been added. This is regardless of the source of the CBD – derived from industrial hemp or cannabis. [¶] Therefore, although California currently allows the manufacturing and sales of cannabis products (including edibles), the use of industrial hemp as the source of CBD to be added to food products is prohibited. Until the FDA rules that industrial hemp-derived CBD oil and CBD products can be used as a food or California

makes a determination that they are safe to use for human and animal consumption, CBD products are not an approved food, food ingredient, food additive, or dietary supplement.”

“Food” includes “drinks,” such as alcoholic beverages.

A full copy of the Department of Public Health memorandum may be found here:

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/HEMP/Web%20template%20for%20FSS%20Rounded%20-%20Final.pdf>

ABC licensees may not manufacture, produce, or sell CBD or CBD products, or any products that contain CBD. It does not matter if the CBD comes from industrial hemp or from cannabis. This also includes non-alcoholic beverage products and edibles. It is thus prohibited for an ABC licensee to use CBD or CBD products, regardless of source, in the manufacture or production of any alcoholic beverage, including using it in mixed drinks or cocktails.

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