

Office of the Director

July 31, 2018

Re: Smoking or consumption of Cannabis, marijuana, or hashish in food establishments

Dear Business Owner:

The Department of Health (DC Health), through its Food Safety and Hygiene Inspection Services Division, protects the public's health by regulating approximately 6,500 food establishments and the food products sold or distributed there.

As I advised in a July 21, 2016 letter to business owners of food establishments, the District of Columbia amended its marijuana laws to permit a person who is 21 years of age or older to possess two (2) ounces or less of marijuana. Although the law allows home usage of marijuana, it prohibits smoking or consumption of Cannabis, marijuana, or hashish in any form in clubs, restaurants, bars, patios, cafes, rooftops, or any other type of food establishment in the District of Columbia. The penalties for violating District law are delineated in this letter.

Definitions

Below, I am citing the official statutory definitions of Cannabis, marijuana, and hashish so that you have the legal meaning of each term. D.C. Official Code § 48-901.02(3) states:

“**Cannabis**” means all parts of the plant genus Cannabis, including both marijuana and hashish, defined as follows:

- (A) “**Marijuana**” includes the leaves, stems, flowers, and seeds of all species of the plant genus Cannabis, whether growing or not. The term “marijuana” does not include the resin extracted from any part of the plant, nor any compound, manufacture, salt, derivative, mixture, or preparation from the resin, including hashish and does not include the mature stalks of the plant, fiber produced from such stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant, which is incapable of germination.
- (B) “**Hashish**” includes the resin extracted from any part of the plant genus Cannabis, and every compound, manufacture, salt, derivative, mixture, or preparation from such resin.” [Bolding added]

A common myth is that two chemicals found in Cannabis can be safely added to food available in a food establishment. **Tetrahydrocannabinol (THC)** is a chemical found in the Cannabis plant and is responsible for most of marijuana's psychoactive effects. **Cannabidiol (CBD)** is a chemical compound found in the Cannabis plant. CBD does not produce any psychoactive effects. THC and CBD are legally considered Cannabis and hashish. Thus, THC and CBD cannot lawfully be present in a food item sold at food establishments in the District of Columbia.

DC Health

Adding Cannabis, marijuana, or hashish to a food product available in a food establishment is food adulteration. In the District, a food establishment cannot lawfully infuse Cannabis, marijuana, or hashish into a food product or sell food products that have been infused with Cannabis, marijuana, or hashish. Only a cultivation center, registered in the medical marijuana program, that has been approved to make food products, may infuse Cannabis, marijuana, or hashish into a food product. Moreover, infused food products created by a cultivation center registered in the medical marijuana program may sell infused food products only to a dispensary registered with the medical marijuana program and cannot sell the infused products to a food establishment. In addition, only dispensaries registered in the medical marijuana program may sell infused food products to patients participating in the medical marijuana program.

If a food product is observed or determined to be adulterated with Cannabis, marijuana, or hashish, DC Health can use “all or any combination” of the following enforcement actions for violations of the District’s Food Code Regulations published in Title 25-A of the District of Columbia Municipal Regulations (DCMR).

DC Health may:

- Issue a Notice of Infraction of up to \$1,000 per violation in accordance with 25-A DCMR § 4720.3.
- Embargo, forbid the sale of, and destroy adulterated food in accordance with 25-A DCMR § 4702.1.
- Summarily suspend the license to operate a food establishment for an imminent health hazard, in accordance with 25-A DCMR § 4714.1, if it determines through an inspection or examination of employees, food, food source, records or other means, as specified in the Food Code Regulations, that an imminent health hazard exists, or that the food establishment has been cited for six (6) or more violations of priority items, or of priority foundation items, or a combination thereof, and the food establishment is unable to correct them while the inspector is on site during the inspection.
- Issue a cease and desist order using any part of its enforcement authority.

- Refer the matter to the Office of the Attorney General to impose civil penalties for violations of any provision of the Food Code not to exceed \$10,000 for each violation in accordance with 25-A DCMR §§ 4720.1 and 4720.2.

Department of Consumer and Regulatory Affairs (DCRA)

If any business allows the use of, provides, sells or otherwise engages in conduct related to the illegal use of Cannabis, marijuana, and hashish at its establishment, the business may be subject to the following punitive actions by DCRA on the first offense:

- Revocation or suspension of all Business Licenses in accordance with D.C. Official Code § 47-2844.
- Revocation or suspension of all Certificates of Occupancy in accordance with D.C. Official Code § 48-1103.
- Notices of Infraction (Fines); \$2,034 for each occurrence in accordance with D.C. Official Code § 47-2851.

Alcoholic Beverage Regulation Administration (ABRA)

If a food establishment that has an alcohol license is facilitating or allowing the use of Cannabis, marijuana, or hashish in its establishment, ABRA may:

- Initiate an enforcement action under D.C. Official Code § 25-823 for violating District law or allowing unlawful conduct to occur on the premises. A violation could result in a fine ranging between \$1,000 and \$30,000, depending on the licensee's violation history. The alcohol license could also be suspended or revoked.
- Initiate an enforcement action under D.C. Official Code § 25-822, which may result in the mandatory revocation of the establishment's alcohol license.
- Determine the license holder is unfit for licensure under D.C. Official Code § 25-301, which may prevent the licensee from renewing any alcohol licenses they may hold and prevent the issuance of new alcohol licenses to the licensee.

Metropolitan Police Department (MPD)

If a food establishment is facilitating or allowing the use of Cannabis, marijuana, hashish, THC or CBD in its establishment, individuals may be subject to the following penalties:

- Arrest or fine the individuals observed consuming Cannabis, marijuana, hashish, THC or CBD, or in possession of the Cannabis, marijuana, or hashish not permitted by law.
- Intentional or knowing possession of more than two ounces of marijuana – misdemeanor with a penalty of up to 180 days incarceration, a fine of not more than \$1,000, or both.

- Sale/Distribution – up to 5 years imprisonment, \$50,000 fine, or both.
 - a) 1st Offense, less than ½ lb. – imprisonment of up to 180 days, \$1,000 fine, or both.
 - b) Distribution to minors may receive double fine and imprisonment penalty.
- Smoking or consuming Cannabis, marijuana, or hashish in public – imprisonment of up to 60 days, a \$500 fine, or both.

In providing this information, DC Health considers your food establishment properly notified of District of Columbia Laws and Regulations. Please contact the Food Safety and Hygiene Inspection Services Division within DC Health at (202) 535-2180 with questions or concerns.

Sincerely,


LaQuandra S. Nesbitt, MD, MPH
Director