



COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Alcoholic Beverages Control Commission Issues Advisory Concerning Immediate Removal of Food and Beverages Containing Hemp Derived CBD and THC from Sale

BY BOWDITCH & DEWEY • JUNE 10, 2024

On May 30, 2024, the Alcoholic Beverages Control Commission (“ABCC”) issued an advisory (“Advisory”) in connection with the joint notice issued by the Massachusetts Department of Public Health (“MDPH”) and the Massachusetts Department of Agricultural Resources (“MDAR”) informing its licensees that it is unlawful to sell food and beverages containing cannabinoid extracts, including tetrahydrocannabinol (“THC”) and cannabidiol (“CBD”), regardless of whether it is derived from the cannabis plant or industrial hemp (the “Joint Notice”).

The Joint Notice was issued in response to an increase in food and beverages (including alcoholic and non-alcoholic beverages) that contain CBD and THC derived from hemp products. According to the Joint Notice although the Agricultural Improvement Act of 2018 (the federal “Farm Bill”) allowed hemp to be lawfully produced in the United States, it did eliminate the federal restrictions on the addition of CBD or THC to food and beverages. Therefore, under the MDPH’s regulations at 105 CMR 500.00 and 105 CMR 590.00, the manufacture or sale of food and beverages from hemp-derived CBD and/or THC is not permitted.

The ABCC’s Advisory reminds its licensees that it is illegal for any licensee to import, manufacture, transport, sell or possess food or beverages that contain hemp-derived CBD and THC and that any licensee violating this prohibition may have its license suspended or revoked. The ABCC Advisory orders that (i) retailers licensed by the ABCC immediately cease the sale of such food and beverages and remove them from shelves and (ii) wholesalers take back all such products that were sold and/or delivered to retailers “at or before their next delivery to each establishment.” It is important to note that although the ABCC does not regulate food, the ABCC’s Advisory provides that its licensees may be subject to enforcement action by the ABCC if they import, manufacture, transport, sell or possess any food products containing hemp derived CBD and/or THC on their licensed premises in addition to any beverages.

The Joint Notice and Advisory each make clear that they only apply to hemp-derived CBD and THC products and are

separate from marijuana products regulated by the Massachusetts Cannabis Control Commission.