

NEWS ALERT

RETAIL, RESTAURANT & HOSPITALITY



Recent Updates Affecting the Retail, Restaurant & Hospitality Industry

By Nicholas W. Vitti Jr, Robert E. Kaelin & Patricia L. Boye-Williams | November 9, 2021

Marijuana and Zoning: Lack of Guidance Creates Unknowns...

On June 22, 2021, Governor Lamont signed Senate Bill 1201 into law. The bill, entitled “An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis”, officially made Connecticut the eighteenth state in the nation to legalize the recreational use of marijuana. The majority of the Act became effective on July 1, 2021, but the rollout of retail sales is expected mid-year 2022. Uncertainty is abundant as businesses who wish to legally sell marijuana to the public search for locations to set up shop.

The Legislature has legalized marijuana but in doing so has left the decision making on where it is to be sold up to the 169 different Connecticut towns. Undoubtedly, many municipalities will utilize their zoning power in order to restrict retail marijuana locations. Clearly, a municipality cannot prohibit what the legislature has made legal, yet restrictions could become prohibitions if the number of potential sites is extremely limited because of prohibitive zoning. Additionally, some towns may be proactive in amending their zoning codes to provide direction to potential retailers, while others (much like when medical marijuana was legalized) will be asleep at the wheel. Indeed, some municipalities have already begun rewriting their zoning codes. Some have enacted moratoriums to investigate code amendments and many others have not addressed the issue at all.

More guidance is needed to fix the disconnect between the new state law and local land use regulation. Perhaps answers will come from the Department of Consumer Protection, new legislative initiatives, amendments to the current legislation or through litigation. Until then, retailers are operating in an unknown quandary with little direction. Stay tuned!

Status of Summary Process Eviction Actions in Connecticut and Massachusetts

Much confusion exists with respect to the status of Evictions. Although the U.S. Supreme Court vacated the CDC’s federal eviction moratorium in *Alabama Association of Realtors, et al. v. Department of Health and Human Services, et al.*, 141 S. Ct. 2485 (2021), various state governments, including Connecticut and Massachusetts, have continued to regulate eviction proceedings in light of the persistent public health issues created by the COVID-19 pandemic. However, importantly, these local eviction protections pertain solely to residential evictions. Commercial evictions can proceed in the normal course. Having said that, due to the pandemic, and remote court proceedings, it is taking a little longer than normal to prosecute a commercial eviction, but we are prosecuting them successfully in both Connecticut and Massachusetts (including actual physical evictions/removals of commercial tenants).

Connecticut Environmental Update

Earlier this year, the Connecticut Department of Energy & Environmental Protection (“DEEP”) issued in final the much-awaited revisions to the Remediation Standard Regulations (“RSRs”). The RSRs create the criteria that responsible parties must comply with as part of remediation of property—whether through the Connecticut Transfer Act or a formal voluntary remediation program. While some of the RSR revisions benefit the regulated community; other changes, especially requirements for reduction of vapor migration from groundwater into buildings, have expanded remediation requirements—and these expanded obligations, with limited exceptions, will also apply to properties currently undergoing remediation.

Along with the RSR revisions, DEEP also made significant revisions to Environmental Use Restrictions. In addition to Environmental Land Use Restrictions ("ELUR"), Connecticut has now implemented Notice of Activity and Use Limitations ("NAUL") which provide another way for responsible parties to restrict the use of contaminated property (e.g., to prohibit residential use) in order to limit the costs of physical remediation of the property. While we anticipate NAULs will be a simpler process, they can only be used in limited situations. By comparison, DEEP has made some significant changes to the ELUR process which we expect could have the impact of increasing both cost and the time it takes to complete the ELUR process. As DEEP only released the new applications for ELURs and NAULs last month, we are still waiting to see if the addition of NAULs as an option will, in fact, make the remediation process simpler.

Finally, all owners of commercial or industrial property in Connecticut should be aware of significant changes to the Connecticut Transfer Act that were put into motion last year. In response to Public Act 20-9, DEEP has put together several working groups to develop new "release-based" regulations. Once these regulations are finalized, the Transfer Act will sunset and instead, property owners will be required to report certain releases when they occur or are discovered. Any properties subject to the Transfer Act at that time will still have to complete Transfer Act obligations, but new transfers will not be subject to the Act. The working groups have been meeting since January of this year and on October 26 held a special meeting to discuss final advice and recommendations from the regulations drafting team. At this time, we cannot predict when new proposed regulations will be drafted and released for public comment and property owners should not count on the Transfer Act ending with respect to potential transactions occurring, at a minimum, within the next two years. For owners who own property that may be subject to the Transfer Act, however, it is worth evaluating the cost/benefit of selling that property now or waiting a few more years until the Transfer Act has, in fact, been replaced by the new release-based reporting requirements.

For more information on this client alert, please contact:

Nicholas W. Vitti Jr. at nvitti@murthalaw.com

Robert E. Kaelin at rkaelin@murthalaw.com

Patricia L. Boye-Williams at pboyewilliams@murthalaw.com

Robert E. Kaelin, Chair
860.240.6036
rkaelin@murthalaw.com

Patricia L. Boye-Williams
860.240.6168
pboyewilliams@murthalaw.com

Michael P. Connolly
617.457.4078
mconnolly@murthalaw.com

Michael J. Donnelly
860.240.6058
mjdonnelly@murthalaw.com

W. Graham Garrett
203.772.7721
wgrahamgarrett@murthalaw.com

Zachary J. Gregoricus
617.457.4154
zgregoricus@murthalaw.com

Kari L. Olson
860.240.6085
kolson@murthalaw.com

James F. Radke
617.457.4130
jradke@murthalaw.com

Matthew Ray
617.457.4060
mray@murthalaw.com

Frank J. Saccomandi, III
860.240.6043
fsaccomandi@murthalaw.com

Joseph D. Szerejko
860.240.6186
jszerejko@murthalaw.com

Thomas S. Vangel
617.457.4072
tvangel@murthalaw.com

Keith S. Varian
203.653.5415
kvarian@murthalaw.com

Nicholas W. Vitti Jr.
203.653.5435
nvitti@murthalaw.com