

**NOTICE OF MEETING
REGULAR MEETING AGENDA**

- 1. CALL TO ORDER**
- 2. AGENDA APPROVAL**
- 3. PUBLIC COMMENT UPON MATTERS ALREADY ON THE AGENDA** *(The Public may comment on any item on the agenda with the exception of items shown under Public Hearings. The standard time limit is 3 minutes.)*
- 4. VISITORS**
- 5. RECONSIDERATION**
- 6. ADOPTION OF CONSENT AGENDA** *(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of Commissioner.)*
 - A. Meeting Minutes from the February 25, 2016 Regular Meeting **Page 3**
- 7. REPORTS**
 - A. Report to the Commission - City Planner Abboud CAC 16-03 Update
 - B. Kenai Peninsula Borough (KPB) Marijuana Task Force Report (MTF)- **Page 7**
 1. KPB Ordinance 2016-10 Shall the Borough Adopt Local Option to Prohibit The Operation of Any Commercial Marijuana Establishment in the Borough Outside Cities
 2. Memorandum from Blaine Gilman, Assembly President re: KPB Ordinance 2016-10
 3. Comment submitted by Chair of the KPB MTF Leif Abel re: KPB Ordinance 2016-10
 4. KPB Ordinance 2016-12 Amending KPB 7.30.020 Changing the Way Distance is Measured Between Marijuana Establishments and Schools, Churches and Correctional Facilities
 5. Memorandum from Stan Wells, KPB Assembly re: KPB Ordinance 2016-12
- 8. PUBLIC HEARING**
- 9. PENDING BUSINESS**
 - A. Generating Revenue through Cannabis **Page 21**
(This item was carried over from the February 25, 2016 meeting agenda)
 - B. Cannabis Businesses on the Spit **Page 29**
(This Item was carried over from the February 25, 2016 meeting agenda)
 1. Memorandum from the Port and Harbor Advisory Commission dated April 12, 2016 re: Recommendation to Allow Retail Marijuana on the Spit
- 10. NEW BUSINESS**
 - A. Welcome New Commissioner! **Page 33**
 - B. Next Meeting Deliverables, Agenda Items **Page 41**
- 11. INFORMATIONAL MATERIALS**
 - A. 2016 Meeting Schedule and Packet Processing Deadlines **Page 43**
 - B. 2016 Commission Attendance at Council Meetings **Page 44**
 - C. Kenai Peninsula Borough Ordinance 2016-07 and Related Memoranda **Page 45**
 - D. Cannabis Conundrum - Article from the ABA Banking Journal Feb 2014 Issue re Banking & Marijuana **Page 55**
 - E. AND News Article dated April 17, 2016 re: Cannabis Clubs **Page 59**
 - F. Local Governments and Marijuana Regulations Revised 040216 A Guide for the City of Homer **Page 63**
 - G. Notice of Marijuana Control Board Meeting - April 27, 2016 **Page 141**
- 11. COMMENTS OF THE AUDIENCE**
- 12. COMMENTS OF THE STAFF**
- 13. COMMENTS OF THE CHAIR**
- 14. COMMENTS OF THE COMMISSION**
- 15. ADJOURNMENT THE NEXT REGULAR MEETING IS THURSDAY, MAY 26, 2016** at 5:30pm in the **COWLES COUNCIL CHAMBERS** located at City Hall 491 E. Pioneer Avenue, Homer Alaska

Session 16-02, a Regular Meeting of the Cannabis Advisory Commission was called to order by Chair Aryn Young at 5:30 p.m. on February 25, 2016 in the Cowles Council Chambers located at City Hall 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS HARRIS, STEAD, SARNO, ROBL, AND LEWIS

ABSENT: COMMISSIONERS CARROLL, REYNOLDS (EXCUSED)

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK KRAUSE

APPROVAL OF AGENDA

Chair Young called for a motion to approve the agenda.

LEWIS/HARRIS - MOVED TO POSTPONE THE AGENDA TO A TIME THAT THE ISSUE OF THE ELECTION HAS BEEN DECIDED.

Discussion ensued on postponing any discussions or actions on the current agenda before them tonight along with any future agendas since if cannabis is banned then it would be a waste of time of the commission. Commissioner Sarno and Harris were against the idea preferring to be able to provide information and educational materials and direction for the community. Commissioner Lewis noted that that was not a directive of Council to the Commission.

Deputy City Clerk Krause requested the commissioners to review and submit recommendations on the Land Allocation Plan and an explanation why they were provided this document. It was also noted that the Public present would be provided the opportunity to comment.

STEAD/LEWIS - MOVED TO AMEND THE MOTION TO INCLUDE NEW BUSINESS ITEM. A LAND ALLOCATION PLAN.

Commissioner Harris offered an amendment to the motion to suspend action on Commissioner Lewis' motion to address those items on the agenda then suspend meetings. There was no second to the motion.

Commissioner Lewis suggested they vote down his motion carry on with the meeting as normal then he will be make a motion not to meet until after elections in April. There was no action on the suggestion.

Chair Young requested a reading of the motion on the floor as amended. Ms. Krause read what she had.

VOTE. YES. ROBL, STEAD, YOUNG, SARNO, LEWIS

VOTE. NO. HARRIS.

Motion carried.

Deputy City Clerk Krause inquired what motion that Commissioner Harris wanted to address to determine where it might fit on the agenda and if the Commission could address the motion tonight. Commissioner Harris wanted to put forth a motion to take out a two page advertisement on Council actions if the commission has a budget.

Commissioner Lewis responded that they do not have any budget allocated which Commissioner Harris then stated the request was moot.

PUBLIC COMMENT

The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing. (3 minute time limit).

This item was not addressed

VISITORS

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Commissioner.)

A. Meeting Minutes for the January 28, 2016 Regular Meeting

The minutes were suspended.

REPORTS

A. Report to the Commission - City Planner Abboud

B. Kenai Peninsula Borough Cannabis Task Force Report - Minutes from the December 10, 2015 Meeting

Reports were suspended.

PUBLIC HEARINGS

PENDING BUSINESS

A. Generating Revenue through Cannabis

B. Cannabis Businesses on the Spit

Pending Business items were suspended.

NEW BUSINESS

A. Land Allocation Plan

1. Memorandum from Deputy City Planner Engebretsen dated February 16, 2016

Chair Young read the title into the record and invited City Planner Abboud to provide additional information on the process.

City Planner Abboud provided a brief summary on the process. He reviewed staff recommendations

A brief discussion in response to a questions posed by Commissioners Harris and Sarno ensued. Included in the discussion was the issue of leasing lands for cannabis businesses presents a liability to the city since the city is the landowner and the city attorney advised against that; comments on the Chip Pad and fish waste being thrown away and that the land should be leased and marketing to a fish waste business. City Planner Abboud noted that the land is already for lease and currently is in the process of having the fence demolished. Commissioner Harris noted that they will give away the fish waste free to whoever wants it.

Commissioner Lewis questioned why the Land Allocation plan was on the agenda. Deputy City Clerk Krause explained that since this was a standing commission of the council and as such could offer recommendations on city owned land the same as all standing commissions, boards and committees.

Some of the city owned lands were for sale but have not garnered any interest. Commissioner Harris recommended advertising the lands for sale again and note that they were zoned for cannabis businesses.

Chair Young requested recommendations for Council on any of the city land. Staff requested support for the staff recommendations.

LEWIS/STEAD - MOVED TO ADOPT THE STAFF RECOMMENDATIONS TO DESIGNATE THE 40 ACRES ACQUIRED THROUGH TAX FORECLOSURE FOR WATERSHED PROTECTION PURPOSES AND THE OLD

HARBORMASTER OFFICE PROPERTY ON PAGE D20 DESIGNATED FOR PARKING AND RESTROOMS AND INCLUDE THE BOAT HOUSE IN THE DESIGNATION.

There was a brief discussion on recommendations,

VOTE. YES. LEWIS, SARNO, YOUNG, STEAD, ROBL
VOTE. NO. HARRIS

Motion carried.

Commissioner Sarno pointed out the parcels next to the Fishing Lagoon and Rink are more family friendly areas of the spit and proceeded to say that there are some areas that are more family friendly than areas of the Spit such as near the Salty Dawg. Comments from Harris in the opposite were offered regarding the Spit being a construction zone and an adult area that kids are brought along.

B. Next Meeting Deliverables, Agenda Items

INFORMATIONAL MATERIALS

A. 2016 Meeting Schedule and Packet Processing Deadlines

B. 2016 Commission Attendance at Council Meetings

C. State of Alaska Application Timelines, Handler Permit Timelines and Consumption Endorsement Regulation Timelines

COMMENTS OF THE AUDIENCE

Members of the audience may address the Commission on any subject. (3 minute time limit)

Scott Adams, city resident, commented on wanting to gather some information and it seems puzzling, he questioned that the Borough just went along with the State regulations and asked about the application of the 10 mile rule. He requested further clarification that if the city bans commercial marijuana then someone across the street on Skyline could open up a business.

Ginny Espenshade, non-resident, commented on the work that the commission has done and believes they have done good work. She has a flyer that she wanted to present to the commission regarding a presentation on designer drugs. She believes that our kids need to be taught the difference between synthetic marijuana and that it is giving marijuana a bad name. She offered that if it is banned that maybe they can put signage out warning about the dangers.

Kevin Walker, non-resident, commented on the financial possibilities of marijuana and cited some numbers that would pay for the new public safety building and he believed it made sense to him that it was being taken from the black market and being tested.

Dixie Hart, city resident, commented on page 23 in the packet regarding buffers and the recent actions of Anchorage changing it as walking instead of crow flies. She wanted to inform the commission that they relaxed their requirements and that the city might want to make changes.

COMMENTS OF STAFF

City Planner Abboud commented on the synthetic drugs being sold in Homer. Commissioner Lewis responded with the information that he had on the availability in Homer.

Deputy City Clerk Krause had no comments.

COMMENTS OF THE CHAIR

Chair Young commented that if a person felt strongly on an issue that they should come and vote. They really appreciate people who get their opinions out and the city's government runs with the public's vote. She hopes to see everyone come out and vote.

COMMENTS OF THE COMMISSION

Commissioner Robl, Harris, Stead, Lewis had no comments.

Commissioner Sarno commented on the interesting dialog that has developed between Chief Robl and herself outside of these meetings. She commented on them being informative and even delightful. Ms. Sarno thanked Chief Robl for serving on this commission, and considers this an oath keepers moment because if the issues that come before them on cannabis clubs and she looks forward to really fruitful dialog.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 6:25 p.m. The next regular meeting is TENTATIVELY scheduled for THURSDAY, APRIL 28, 2016 OR THE NEXT SCHEDULED MEETING DATE AFTER THIS ISSUE OF ALLOWING COMMERCIAL CANNABIS HAS BEEN VOTED ON, A MEETING WILL BE at 5:30 p.m. in the City Hall Cowles Council Chambers located at 491 E Pioneer Avenue, Homer, Alaska.

Renee Krause, CMC, Deputy City Clerk

Approved: _____

Introduced by:	Gilman
Date:	04/05/16
Action:	Motion to Introduce and Set for Public Hearing, Public Comment Period Extended to 04/19/16
Date:	04/19/16
Action:	
Hearing:	05/03/16
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-10**

**AN ORDINANCE PLACING A QUESTION ON THE BALLOT OF WHETHER THE
KENAI PENINSULA BOROUGH SHALL ADOPT A LOCAL OPTION TO PROHIBIT
THE OPERATION OF ANY COMMERCIAL MARIJUANA ESTABLISHMENT IN
THE AREA OF THE KENAI PENINSULA BOROUGH OUTSIDE OF THE CITIES**

WHEREAS, during the election held November 4, 2014 a majority of the voters in the State of Alaska approved Proposition 2 which legalized the possession and commercial cultivation, manufacturing, testing and sale of marijuana in the State of Alaska; and

WHEREAS, the initiative in Proposition 2 specifically authorizes the local governing body by ordinance or the voters of the municipality by initiative to prohibit any or all such commercial marijuana establishments from operating in their boundaries; and

WHEREAS, any such prohibition may not prohibit the personal use and possession of marijuana and marijuana products as authorized under AS 17.38.020; and

WHEREAS, during public hearings held by borough boards and commissions for numerous marijuana-related issues, residents have stepped forward expressing their concerns about allowing commercial marijuana establishments to operate in the Kenai Peninsula Borough; and

WHEREAS, the best interests of the borough would be served by allowing the voters in the area of the borough outside of the cities to decide whether or not to adopt a local option to prohibit all commercial marijuana establishments from operating in the borough outside of the cities; and

WHEREAS, at its meeting of _____ the planning commission recommended _____
_____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That a question shall be placed on the ballot for the regular election of October 4, 2016, which reads as follows:

PROPOSITION NO. _____

Shall the Kenai Peninsula Borough adopt a local option to prohibit the operation of any commercial marijuana establishment including all of the following license types:

- a) A retail marijuana store;
A "retail marijuana store" means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.
- b) A marijuana cultivation facility;
A "marijuana cultivation facility" means an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
- c) A marijuana product manufacturing facility; and
A "marijuana product manufacturing facility" means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
- d) A marijuana testing facility
A "marijuana testing facility" means an entity registered to analyze and certify the safety and potency of marijuana.

YES _____ A "yes" vote means that commercial marijuana establishments will be prohibited in the area of the borough outside of the cities.

NO _____ A "no" vote means that commercial marijuana establishments will be allowed in the area of the borough outside of the cities subject to applicable legal requirements.

SECTION 2. If the proposition in Section 1 is approved by a majority of the voters voting on the question all commercial marijuana establishments including retail marijuana stores, marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities are prohibited from operating in the area of the

borough outside of the cities commencing immediately after certification of the election.

SECTION 3. Pursuant to 3 AAC 306.250 if a majority of the voters vote to approve the proposition in section 1 of this ordinance, all licenses for a commercial marijuana establishment within the area of the Kenai Peninsula Borough outside of the cities in the borough, and in the unincorporated area within ten miles outside of the boundary of the borough, are void 90 days after the date the results of the election are certified. A license that expires during the 90 days after the certification of this local option election may be extended until it is void under this section by payment of a prorated portion of the annual license fee.

SECTION 4. If a majority of the voters vote to adopt a local option as provided in section 1 of this ordinance the borough clerk shall notify the State of Alaska Alcohol & Marijuana Control Office of the results of the election immediately after the results of the election are certified. Additionally the borough clerk shall post public notice of the prohibition in a central location within the boundary of the area of the borough outside of the cities before the prohibition becomes effective.

SECTION 5. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2016.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

144 North Binkley Street
Soldotna, AK 99669
Phone 907-714-2160
Fax 907-714-2388

Blaine Gilman, Assembly President
Brent Johnson, Vice President

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Blaine Gilman, Assembly Member (M) for B.G.

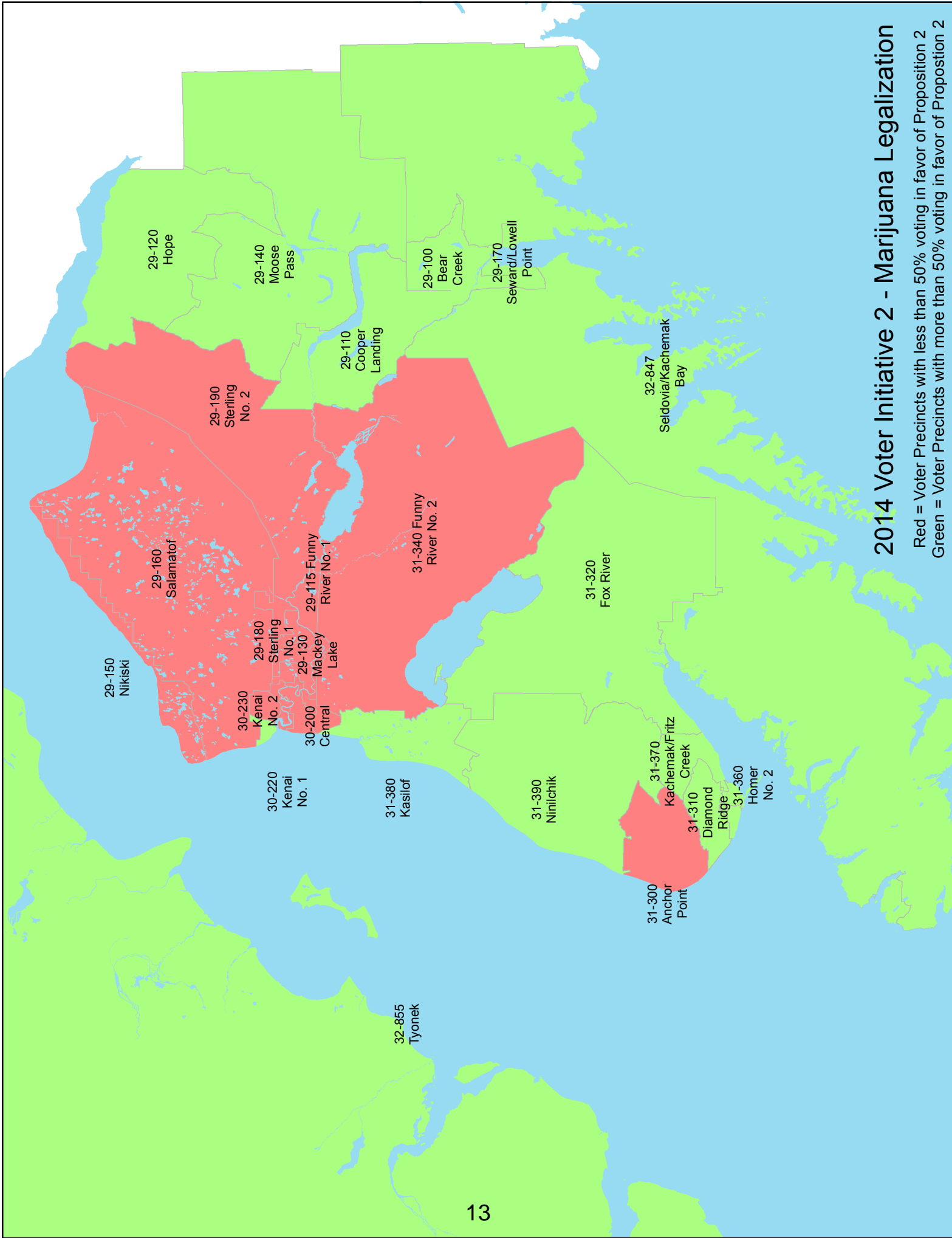
DATE: March 24, 2016

RE: Ordinance 2016-10, An Ordinance Placing a Question on the Ballot of Whether the Kenai Peninsula Borough Shall Adopt a Local Option to Prohibit the Operation of Any Commercial Marijuana Establishment in the Area of the Kenai Peninsula Borough Outside of the Cities (Gilman)

This ordinance is proposed because I have been approached by numerous members of the public requesting that the assembly pass an ordinance banning all commercial marijuana establishments in the borough. Although the assembly is authorized to do this by law, in my opinion the better approach is to put this question out to the vote of the residents of the borough in the area outside the cities. As can be seen in the attached map and table showing the results of the election held in November 2014 on proposition 2, the vote was very close in the areas outside of the cities. Although we cannot be certain due to the absentee, question, and early voting ballots, it appears likely that most areas outside of the cities voted against that proposition. Due to the closeness of the vote, it is appropriate for these voters to make a determination as to whether to prohibit commercial marijuana operations outside of the cities.

The initiative that was approved by the state does give local municipalities the option to adopt a local option that would prohibit the commercial sale and testing of marijuana in their boundaries. The regulations adopted by the state also require that if a local option is approved then all existing issued licenses shall become void 90 days after the date the results of the election are certified.

Your favorable consideration of this ordinance would be appreciated.



2014 Voter Initiative 2 - Marijuana Legalization

Red = Voter Precincts with less than 50% voting in favor of Proposition 2
 Green = Voter Precincts with more than 50% voting in favor of Proposition 2

	Registered Voters	Total Votes	Yes	No	% Yes	
29-100 Bear Creek	1450	601	345	256	57.4%	
29-110 Cooper Landing	345	146	78	68	53.4%	
29-115 Funny River No. 1	824	317	157	160	49.5%	
29-120 Hope	175	69	49	20	71.0%	
29-130 Mackey Lake	1091	407	164	243	40.3%	
29-140 Moose Pass	336	131	82	49	62.6%	
29-150 Nikiski	1823	779	350	429	44.9%	
29-160 Salamatof	2064	922	419	503	45.4%	
29-170 Seward-Lowell Point	1799	666	391	275	58.7%	
29-180 Sterling No. 1	1722	632	265	367	41.9%	
29-190 Sterling No. 2	1941	763	339	424	44.4%	
District 29 - Absentee	0	2223	972	1251	43.7%	
District 29 - Question	0	271	182	89	67.2%	
District 29 - Early Voting	0	72	36	36	50.0%	2566
	13570	7999	3829	4170	47.9%	32.1%
30-200 Central	1943	707	329	378	46.5%	
30-210 K-Beach	2599	1050	429	621	40.9%	
30-220 Kenai No. 1	2502	950	514	436	54.1%	
30-230 Kenai No. 2	1368	524	243	281	46.4%	
30-240 Kenai No. 3	1272	552	247	305	44.7%	
30-250 Soldotna	4113	1581	699	882	44.2%	
District 30 - Absentee	0	1989	873	1116	43.9%	
District 30 - Question	0	346	215	131	62.1%	
District 30 - Early Voting	0	28	9	19	32.1%	2363
	13797	7727	3558	4169	46.0%	30.6%
31-300 Anchor Point	1707	710	330	380	46.5%	
31-310 Diamond Ridge	997	434	282	152	65.0%	
31-320 Fox River	577	221	120	101	54.3%	
31-340 Funny River No. 2	1597	596	271	325	45.5%	
31-350 Homer No. 1	2490	909	492	417	54.1%	
31-360 Homer No. 2	2009	682	358	324	52.5%	
31-370 Kachemak/Fritz Creek	1677	696	425	271	61.1%	
31-380 Kasilof	2312	1003	564	439	56.2%	
31-390 Ninilchik	1217	481	243	238	50.5%	
District 31 - Absentee	0	2452	1317	1135	53.7%	
District 31 - Question	0	282	193	89	68.4%	
District 31 - Early Voting	0	69	40	29	58.0%	2803
	14583	8535	4635	3900	54.3%	32.8%
32-847 Seldovia/Kachemak Bay	439	162	101	61	62.3%	
32-855 Tyonek	333	44	28	16	63.6%	
	772	206	129	77	62.6%	
	42722	24467	12151	12316	49.7%	

IT IS TIME TO SUPPORT MARIJUANA ESTABLISHMENTS IN OUR COMMUNITY

By Leif Abel

The Kenai Peninsula Borough currently has a review process in place for the licensing of Marijuana Establishments. It has named the assembly as the local regulatory authority. When a marijuana licensee provides a completed packet to the state it will be sent to the borough government for review, first by the planning department and then by the assembly. Licensee's will appear before the planning commission and the assembly as well as the state Marijuana Control Board. This is the process the KPB is currently using to permit Marijuana Establishments on the Kenai Peninsula outside of the cities. This took almost a year to formulate and was an inclusive process worked on by the Marijuana Task Force, the administration, staff (planning and legal), the assembly, and the public, through rigorous and lengthy comment. It was the responsible action to take.

It would be irresponsible and divisive for the assembly to pass an ordinance placing a marijuana establishment opt out question on a KPB Ballot for the voters. While Ballot Measure Two grants local governments the right to place an opt out question on the ballot, it was written for small bush communities, much like the parallel alcohol regulation. As an example, most of us would be unsupportive of an ordinance putting a question on the ballot to make the entire KPB a dry community. Interestingly enough, residents of Soldotna, Kenai, Seward, or Homer will be unable to vote if the question is placed on the ballot. They have their own local governments that control the local option.

No law is perfect and this is certainly true of Ballot Measure Two. Consider the vastness of our borough. It is important for the residents of communities such as Fritz Creek, Hope, Anchor Point, Happy Valley, Moose Pass, Clam Gulch, Ninilchik, Nikiski, Seldovia, Tyonek, Nanwalek or Kasilof to make their own choices about land use. It would be an imposition on the freedoms of the people from these areas for population bases just outside the city limits of Kenai and Soldotna to make those decisions. The communities throughout this large borough are culturally diverse. Imposing their disparate opinions on one another would only cause discord and hard feelings. We must strive to meet the intent of the initiative, rather than ignore it in order to fit a specific program of discrimination.

Local Option Zoning, the review and permitting process, and the assembly as the Local Regulatory Authority are the three components of a comprehensive plan for the implementation of Ballot Measure Two on the Kenai Peninsula. This comprehensive plan, unanimously approved by the KPB Marijuana Task

Force, and passed by the Assembly with support from the Mayor, offers plenty of reasonable protections for all citizens of the borough while supporting economic development and jobs. It is a good solution, one the borough worked hard to provide.

Over 20 businesses applied for Marijuana Establishment Licenses on the Kenai Peninsula. Many are outside the cities. Seeing the state and borough rules finalized, these businesses have put many resources into licensing and preparation. In good faith they have followed all of these rules and indications from the local and state governments, including participation in the process through testimony. Why, after all that, should the assembly facilitate an attack on their existence? This is a complete reversal of the ordinance already passed that allows for the permitting and oversight of such businesses. These are premise-based licenses. That means, to receive a license, the facility needs to be constructed and ready to operate. In turn this means, that in order to apply, most businesses have already spent the lion's share of their startup capital to buy land and build. These are over 20 families within our borough that have put their life savings into businesses they are passionate about and dedicated to. Our community has the chance to be supportive of how neighbors feed their families through legal and regulated means. Hardworking farmers need cash crops. Agriculture can be an important part of a community, and cultivating cannabis is a part of agriculture.

Let us welcome entrepreneurship, economic diversity and development in our community. Let's welcome safe access to cannabis as medicine for those who need it. Let's welcome a thriving regulated market that reduces risk to minors in our community while providing safe, tested, high-quality product to consumers. Let's welcome more sales tax dollars to fund our schools. Let's welcome hundreds of new jobs for families. Let's make welcome our own neighbors who want to create more good businesses here. That is the way to show respect and support for your fellow citizen. That is the way to build a thriving economy for the Kenai Peninsula Borough.

It would be wonderful if the next cannabis-related ordinance introduced was a proclamation of support for these dedicated entrepreneurs and their Marijuana Establishments. It is time borough leadership became more vocal in supporting this new industry. This is a state and borough approved process. Join me in giving these folks the positive support the borough gives other businesses. I am proud of these pioneers in a new market. I am honored to count myself as one. Let's be kind, compassionate, and work together. With continued careful planning we can strengthen our community.

Introduced by: Welles
Date: 04/05/16
Hearing: 05/03/16
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-12**

AN ORDINANCE AMENDING KPB 7.30.020 TO CHANGE THE WAY MINIMUM DISTANCES ARE MEASURED BETWEEN MARIJUANA ESTABLISHMENTS AND SCHOOLS, CHURCHES AND CORRECTIONAL FACILITIES, AND IMPOSING MINIMUM DISTANCES BETWEEN MARIJUANA ESTABLISHMENTS AND LOCAL OPTION ZONING DISTRICTS.

WHEREAS, the distance between marijuana establishments and schools, recreation and youth centers, and places where religious services are conducted should be measured by the shortest distance between the premises property line and the outer parcel boundary of the other property as this is administratively easier to measure and will maximize the distances; and

WHEREAS, imposing a 500-foot distance requirement between existing local option residential zoning districts and marijuana establishments is consistent with ensuring the residential character of the local option zoning district; and

WHEREAS, at its meeting of _____ the Planning Commission recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 7.30.020(B) is hereby amended as follows:

...

- B. Marijuana establishments shall not:
1. be located within 1,000 feet of any school. The distance specified in this subsection must be measured by the shortest [PEDESTRIAN ROUTE FROM THE PUBLIC ENTRANCE OF THE BUILDING IN WHICH THE LICENSED PREMISES WOULD BE LOCATED TO] distance between the licensed premise's property line and the outer parcel boundaries of the school.
 2. be located within 500 feet of a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility. The distance specified in this subsection must be measured by the shortest [PEDESTRIAN ROUTE FROM THE PUBLIC

ENTRANCE OF THE BUILDING IN WHICH THE LICENSED PREMISES WOULD BE LOCATED TO] distance between the licensed premise's property line and the outer parcel boundaries of the recreation or youth center, or the [MAIN PUBLIC ENTRANCE] outer parcel boundaries of the building in which religious services are regularly conducted, or those of the correctional facility.

3. be located within a local option zoning district.
4. be located within 500 feet of an existing local option zoning district, the distance of which, shall be measured by the shortest distance between the proposed marijuana establishment property line and the nearest edge of the local option zoning district.

SECTION 2. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2016.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

144 North Binkley Street
Soldotna, AK 99669
Phone 907-714-2160
Fax 907-714-2388

Blaine Gilman, Assembly President
Brent Johnson, Vice President

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Stan Welles, Assembly Member (SW) for S.W.

DATE: March 24, 2016

RE: Ordinance 2016-12, An Ordinance Amending KPB 7.30.020 to Change the Way Minimum Distances are Measured Between Marijuana Establishments and Schools, Churches and Correctional Facilities, and Imposing Minimum Distances Between Marijuana Establishments and Local Option Zoning Districts (Welles)

This ordinance provides that the distance between a licensed marijuana establishment and a school, a place of public worship, a youth center and a correctional facility would be determined by measuring the distance between the licensed premises property line and the outer parcel boundaries of the other location. In my view this is a much simpler way of measuring the distance than following the pedestrian route from the public entrance of the licensed premises building to the outer boundaries of the property where the school or other facilities are located. It also adds a new provision that would prohibit a marijuana establishment from being located within 500 feet of an existing local option zoning district. I think this is important to support the purpose of local option zoning districts in which licensed marijuana establishments are no longer authorized under KPB 7.30.020(B)(3).

Your approval of this would be appreciated.



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

MEMORANDUM

TO: CANNABSI ADVISORY COMMISSION
FROM: RENEE KRAUSE, CMC, DEPUTY CITY CLERK
DATE: APRIL 20, 2016
SUBJECT: GENERATING REVENUE THROUGH CANNABIS

This item has been carried over from the February meeting since the agenda was suspended.

Following is a memorandum from the City Attorney that was given last year to the City Manager. This is similar in content to what was presented to the Commission by the City Attorney dated November 18, 2015.

Previous discussions and recommendations were to wait for the regulations to be finalized and see what the Borough is going to do.

The State regulations have been finalized. Attached is a spreadsheet on the other municipality's actions.

The Borough is considering KPB Ordinance 2016-10 to put the question on their October ballot to adopt Local Option and Prohibit Commercial Marijuana Establishments in the Kenai Peninsula Borough. Due to the number of public attending the assembly meeting and comments still unheard the Assembly has carried this issue over to the next Borough meeting.

As you are aware in Homer there is a petition circulating to have the question put to the voters of our city to ban marijuana. Those petitioners have until June 23, 2016 to present 309 signatures to get this on the October ballot.

Recommendation
Informational in Nature.

INFORMAL MEMORANDUM

TO: CITY MANAGER KATIE KOESTER

FROM: HOLLY WELLS

**RE: INTRODUCTION TO IMPOSITION OF CANNABIS MUNICIPAL TAX
OPTIONS**

CLIENT: CITY OF HOMER, ALASKA

FILE NO.: 506742-23

DATE: JULY 17, 2015

This memorandum provides an informal introduction to potential revenue sources for the City of Homer, Alaska generated by the new Cannabis Industry. This memorandum is intended only as a cursory introduction of the City's revenue generating options, and is by no means an exhaustive analysis of the issues raised.

Based upon current laws, the City may impose a sales and/or excise tax on cannabis but, at this time, would have to collect these taxes itself. Additionally, the City may also recover regulatory-type fees for various activities, such as: application and registration fees, building inspection fees, zoning and permitting fees, and building design fees. The nature of these fees and their application cannot be fully assessed, however, until the state regulations are adopted.

Introduction:

Alaska Statute 29.35.010(6) grants municipalities "general powers, subject to other provisions of law ... to levy a tax or special assessment, and impose a lien for its enforcement." The Alaska Constitution requires that a "liberal construction shall be given to the powers of local government units."

Municipal Sales, Use and Excise Tax:

Sales and Use Tax: AS 29.45.650-710 authorizes the levy of sales and use taxes at the municipal level. The statutes give broad authority to municipalities to levy

taxes on sales, rents and services provided within the municipality.¹ Currently, the sales tax in Homer is 7.5% (4.5% City of Homer and 3% Kenai Peninsula Borough).

It is unclear whether the Kenai Peninsula Borough (“Borough”) will implement a sales tax on marijuana. If it does, AS 29.53.440 requires the City to levy a sales tax on every source already taxed by the Borough or none at all. Therefore, if the Borough decides to implement a sales tax on various aspects of the cultivation, distribution and sale of marijuana, the City will have to impose the same sales tax or none at all.

Conversely, the Borough could choose to exempt a marijuana sales tax if the City decides to implement the tax. In 2005, the sales tax laws changed to allow a borough to exempt any source from the borough sales tax if it is taxed by a city within the borough.² However, if the Borough does not implement a sales tax, the City will incur the cost of collecting the sales tax. This could prove to be costly.

Excise Tax:

An excise tax is a tax on the performance of an act. An excise tax resembles an import or manufacturing tax.³ Due to the nature of the excise tax, it is not subject to voter ratification.

Based on preliminary research, it appears that the City can establish an excise tax independent of the Borough. As stated above, AS 29.35.010(6) provides: “All municipalities have the following general powers, subject to other provisions of law . . . to levy a tax or special assessment, and impose a lien for its enforcement.” The Alaska Supreme Court is reluctant to impose limitations on the taxing authority of municipalities where none are expressed.⁴ The fact that only property taxes and sales taxes are mentioned in AS 29.45 is not likely to be construed as a prohibition on taxes that are not mentioned. Therefore, it appears that the City can levy an excise tax independent of the Borough.

However, if the Borough forgoes an excise tax, the City will be tasked with collecting the tax. The cost of independently pursuing an excise task will need to be explored more thoroughly to determine whether the benefits outweigh the costs. The

¹ One of the hallmarks of a sales tax is that it taxes the actual transaction involved; i.e., it is not until the sale, rental, or provision of services takes place that the tax is imposed. This distinguishes a sales tax from a license or privilege tax, which is a sum exacted for the privilege of carrying on an occupation in general, rather than any particular exercise of this privilege. *City of Homer v. Gangl*, 650 P.2d 396, 399 (1982)(citing 2A C. Antieau, Municipal Corporation Law § 21.80, at 21–134 (1982).

² This allows a borough to ensure that an item in the city costs the consumer no more than it would cost in the borough. This tends to “level” the playing field when purchasing certain items in both the city and the borough.

³ *Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 989 (2008).

⁴ *See Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1121 (Alaska 1978).

City may wish to approach the Borough about implementing an excise tax to offset this cost.

Additionally, the State will impose an excise tax on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility.⁵ This should not preclude the City from imposing its own excise tax as there is no general prohibition against like municipal and state taxes.⁶

Other Sources of Revenue:

There are other potential revenue sources through the regulation of marijuana. The new law provides for the cultivation, testing, processing, packaging, transporting and sale of marijuana. The City will regulate many, if not all, of these aspects of marijuana becoming legalized. The City will likely be able to collect fees for building design and inspection, business registration issuance, suspension and/or revocation, as well as other various fees associated with starting and operating a business. These options will need to be explored more fully once the pending marijuana legislation is passed.

HCW

⁵ AS 43.61.010 allows for an excise tax to be imposed on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. Under the statute, every marijuana cultivation facility shall pay an excise tax at the rate of \$50 per ounce, or proportionate part thereof, on marijuana that is sold or transferred from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility.

⁶ *Liberati*, 584 P.2d at 1122.

	Banned by Ord	Banned by ballot	Nothing in place	Regs passed or pending
Adak				Local Authority (LA), sets fines
AE Boro		X		
Akutan		X		
Anchorage				LA, license required, land use permit, criminal laws, vehicle laws, secondhand smoke laws, April ballot on 5% tax
Anderson				3/8 council vote on ban all commercial
Barrow		X		3/3 council discussion
BB Boro				3/7 vote on one year moratorium
Bethel				Six month ban on processing, voters passed 15% sales tax
Cantwell		X		
Cordova				LA, ban on certain manufacturing methods
Delta Junction	X			
Denali Boro		X		
Dillingham		X		Advisory committee formed
Fairbanks				5% tax, fines for public consumption
FNS Boro				Local zoning, permit required
Fort Yukon				LA
Healy			X	
Homer				3/14 vote on placing ban on special election ballot Failed 3/16 - Initiative in Petition Phase to Put Question on Ballot
Kenai				Increased buffer at schools, zoning laws apply, no on-site consumption
KI Boro				3/3 vote on ban all commercial 4/16 - Ord 2016-10 put question to Voters to Ban in Borough outside of Cities
King Cove		X		
Kodiak City		X		
Kotzebue				Public consumption prohibited
KP Boro				LA, permit required, increased buffer zone at schools, hours of operation,
Mat-Su Boro				10/16 ballot on banning all commercial
N Slope Boro				Public consumption prohibited
Nenana		X		
North Pole			X	
NWA Boro				6% tax, business license fee
Palmer		X		
Seibovia			X	
Seward			X	
Soldotna	X			Two year moratorium thru 12/31/17
Unalaska	X			
Valdez				Zoning regs to be heard mid-March
Wasilla	X			
Whitier			X	



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

MEMORANDUM

TO: CANNABIS ADVISORY COMMISSION
FROM: RENEE KRAUSE, CMC, DEPUTY CITY CLERK
DATE: APRIL 21, 2016
SUBJECT: CANNABIS BUSINESSES ON THE SPIT

Commissioner Sarno requested this item to be on the agenda for discussion.

This item was carried over from the February meeting as the agenda was suspended.

Since that time the Port & Harbor Advisory Commission addressed the issue at a recent meeting following is a memorandum and excerpt of the discussion on their recommendation.

Recommendation

Bring to the Floor with a motion to discuss.



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Memorandum

TO: MAYOR WYTHE, CITY COUNCIL, ADVISORY PLANNING COMMISSION AND CANNABIS
ADVISORY COMMISSION

FROM: MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

THROUGH: KATIE KOESTER, CITY MANAGER

DATE: APRIL 12, 2014

SUBJECT: PORT AND HARBOR ADVISORY COMMISSION RECOMMENDATION TO ALLOW RETAIL
MARIJUANA ON THE SPIT

At the March 23rd Port and Harbor Advisory Commission regular meeting the Commission discussed retail marijuana sales on the spit and passed a motion recommending that it be allowed. Four Commissioners voted yes and two voted no.

The supporting discussion included-

- The city will benefit from the tax revenues
- The spit is the heart of recreation in Homer and marijuana is a big part of recreation
- Alcohol is very prevalent on the spit so there isn't a reason not to allow a way to recreate without getting drunk
- People have been doing it out there for a long time

The objecting comment was that right now there isn't a way to qualify when a person is legally impaired from using marijuana and until it can, it shouldn't be allowed.

They summarized their reasoning in that allowing retail sales of marijuana in marine commercial probably won't change behavior on the spit because it's already happening now. It will make things legal and maybe mellow people out who are using alcohol.

The Port and Harbor Advisory Commission recommends the Planning Commission, Cannabis Advisory Commission, and the City Council take action to allow marijuana sales in the marine commercial district.

An excerpt of the March 23rd meeting minutes is included.

B. Commercial Marijuana on the spit

Commissioner Zimmerman said that others have said that the marine commercial area isn't a place to sell marijuana if it is legal in Homer. The spit the heart of recreation in Homer and marijuana is a big part of recreation, so he questions why we wouldn't want to do that out there.

ZIMMERMAN/DONICH MOVED TO SEND A RECOMMENDATION TO THE PLANNING COMMISSION, CITY COUNCIL, AND CANNABIS ADVISORY COMMISSION, THAT THE PORT AND HARBOR ADVISORY COMMISSION WOULD LIKE TO SEE MARIJUANA SALES ALLOWED IN THE MARINE COMMERCIAL DISTRICT.

There was discussion about marijuana on vessels. The Coast Guard is federal and marijuana isn't legal anywhere federally, so the Coast Guard won't be making any changes. It is up to a boat operator to enforce the rule on their boat.

Commissioner Donich thinks retail should be allowed and taxed heavily.

Commissioner Stockburger commented the US figured out at the end of prohibition that it costs a lot of money to keep it from happening, so take the liability and turn it into an asset and have been making a lot of money off alcohol since. They could do the same thing with this.

Commissioner Zimmerman added alcohol is very prevalent on the spit so there isn't a reason not to allow a better way to have fun without getting drunk.

Commissioner Carroll commented that it's quite easy to test for alcohol , but not as easy to test if someone is under the influence of marijuana. His objection is that until we can quantify when a person is legally impaired, he's resistant.

Commissioner Donich noted the Police Chief had commented that it's hard to test if someone is driving under the influence of marijuana and it would cost \$40,000 per officer to send them to training. He questions what they have been doing for the last fifty years? People have been doing this for a long time.

When asked his thoughts, Harbormaster Hawkins commented that allowing commercial sales on the spit won't significantly change the behavior out there; it's a different spit after 10 p.m. He can't see how sales out there would increase the amount of partying that goes on, and it still has to be used in a legal way.

Commissioner Stockburger suggested the memo include reasoning that it probably won't change behavior on the spit because it's happening now already. It will make things legal, and maybe mellow out the people using alcohol.

Commissioner Zimmerman added it's another source of tax revenue.

VOTE: YES: STOCKBURGER, ZIMMERMAN, ULMER, DONICH

NO: HARTLEY, CARROLL

Motion carried.



City of Homer

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(f) 907-235-3143

MEMORANDUM

TO: CANNABIS ADVISORY COMMISSION
FROM: RENEE KRAUSE, CMC, DEPUTY CITY CLERK
DATE: APRIL 20, 2016
SUBJECT: WELCOME NEW COMMISSIONER!



We are glad you decided to join
THIS Commission

Recommendation
Informational in Nature.



City of Homer

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Office of the Mayor

491 East Pioneer Avenue
Homer, Alaska 99603

mayor@ci.homer.ak.us

(p) 907-235-3130

(f) 907-235-3143

Memorandum 16-052

TO: HOMER CITY COUNCIL
FROM: MARY E. WYTHE, MAYOR
DATE: MARCH 22, 2016
SUBJECT: APPOINTMENT OF **TIMOTHY CLARK TO THE CANNABIS ADVISORY COMMISSION**,
APPOINTMENT OF MARK MASSION TO THE LIBRARY ADVISORY BOARD, AND
REAPPOINTMENTS OF ERIN HOLLOWELL AND MICHELE MILLER TO THE PUBLIC
ARTS COMMITTEE.

Timothy Clark is appointed to the Cannabis Advisory Commission to fill the seat of outgoing member Chad Jones with a term to expire May 1, 2017.

Mark Massion is appointed to the Library Advisory Board to fill the seat of outgoing member Patrick Brown with a term to expire April 1, 2017.

Erin Hollowell and Michele Miller are reappointed to the Public Arts Committee with terms to expire April 28, 2019.

RECOMMENDATION:

Confirm the appointment of Timothy Clark to the Cannabis Advisory Commission, the appointment of Mark Massion to the Library Advisory Board, and reappointments of Erin Hollowell and Michele Miller to the Public Arts Committee.

Fiscal Note: N/A

11

12



City of Homer

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Office of the Mayor

491 East Pioneer Avenue
Homer, Alaska 99603

mayor@ci.homer.ak.us

(p) 907-235-3130

(f) 907-235-3143

March 30, 2016

Tim Clark
4142 Mattox Rd. Lot #1
Homer, AK 99603

Dear Tim,

Congratulations! Council confirmed/approved your appointment to the Cannabis Advisory Commission during their Regular Meeting of March 29, 2016 via Memorandum 16-052.

Included is the 2015 Public Official Conflict of Interest Disclosure Statement. Please complete this document and return it to the Clerk's office. This form will be retained in the Clerk's office. It is a public document and may be requested by any member of the public. In the event the Public Official Conflict of Interest Disclosure Statement is requested by a member of the public, you will be notified of the requestor's name.

Also included is the Code of Ethics as outlined in Homer City Code 1.18. This provides important guidelines in your role as a commissioner as to conduct and conflicts of interest.

Thank you for your willingness to serve the City of Homer on the Cannabis Advisory Commission. There certainly are exciting times ahead.

Your term will expire May 1, 2017.

Cordially,


Mary E. Wythe, Mayor

Enc: Memorandum 16-052
Certificate of Appointment
2015 Public Official Conflict of Interest Disclosure Statement
Robert's Rules of Order Handbook
HCC 2.78 Cannabis Advisory Commission
HCC 1.18 Conflicts of Interest, Partiality, and Code of Ethics

Cc: Cannabis Advisory Commission

City of Homer

Homer, Alaska

Mayor's Certificate of Appointment

Greetings

Be It Known That

Timothy Clark

Has been appointed to

serve as

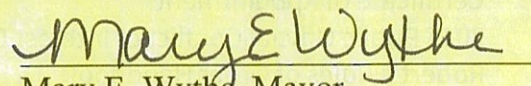
“Commissioner”

on the

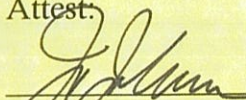
“Cannabis Advisory Commission”

This appointment is made because of your dedication to the cause of good government, your contributions to your community and your willingness to serve your fellow man.

*In Witness whereof I hereunto set my hand
this 30th day of March 2016.*


Mary E. Wythe, Mayor

Attest:


Jo Johnson, MMC, City Clerk



CITY OF HOMER
 COMMISSION, COMMITTEE, BOARD AND TASK FORCE
 APPLICATION FORM

DEC 30 2015 11:04:50
 CITY CLERK'S OFFICE
 CITY OF HOMER
 491 E. Pioneer Avenue
 Homer, AK 99603
 PH. 907-235-3130
 FAX 907-235-3143

Received by the Clerk's Office

The information below provides some basic background for the Mayor and Council
 This information is public and will be included in the Council Information packet

Name: Timothy Clark Date: 12-30-15
 Physical Address: 4142 Mattox Rd Lot #1 Homer AK 99603
 Mailing Address: 4142 Mattox Rd Lot #1 Homer AK 99603
 Phone Number: 907-299-3664 Cell #: Work #:
 Email Address: ~~tclark@homerak.com~~ tclarkak907@hotmail.com

The above information will be published in the City Directory and within the city web pages if you are appointed by the Mayor and your appointment is confirmed by the City Council

Please indicate the commission(s), committee(s), board or other that you are interested in serving on by marking with and X or a v

	ADVISORY PLANNING COMMISSION	1 ST & 3 RD WEDNESDAY OF THE MONTH AT 6:30 PM WORKSESSION PRIOR TO EACH MEETING AT 5:30 PM
	ECONOMIC DEVELOPMENT ADVISORY COMMISSION	2 ND TUESDAY OF THE MONTH AT 6:00 P.M.
	PARKS & RECREATION ADVISORY COMMISSION	3 RD THURSDAY OF THE MONTH AT 5:30 P.M.
	PORT & HARBOR ADVISORY COMMISSION	4 TH WEDNESDAY OF THE MONTH OCT-APRIL AT 5:00 P.M. MAY - SEPTEMBER 6:00 PM
	PERMANENT FUND COMMITTEE	2 ND THURSDAY OF THE MONTH AT 5:15 P.M. FEBRUARY, MAY, AUGUST & NOVEMBER
	PUBLIC ARTS COMMITTEE	2 ND THURSDAY OF THE MONTH AT 5:00 P.M. FEBRUARY, MAY, AUGUST & NOVEMBER
	LIBRARY ADVISORY BOARD	1 ST TUESDAY OF THE MONTH AT 5:00 P.M.
	CITY COUNCIL	2 ND AND 4 TH MONDAY OF THE MONTH SPECIAL MEETINGS & WORKSESSIONS AT 4:00 P.M. COMMITTEE OF THE WHOLE AT 5:00 P.M. REGULAR MEETING AT 6:00 P.M.
X	OTHER - PLEASE DESIGNATE Cannabis Advisory Commission	

I have been a resident of the city for 7 yrs 8 mos. I have been a resident of the area for ~~3~~ yrs 7 mos.

I am presently employed at Self employed taxi driver for Kosdas Taxi

Please list any special training, education, or background you may have which is related to your choice of commission, committee, board or task force:

I've been a member of Kachemak Cannabis Coalition for over a year. I've been to several borough and city meetings for Cannabis.

Have you ever served on a similar commission, board, committee or task force? If so please list when, where and how long:

No

Why are you interested in serving on the indicated commission, committee, board or task force?

I want to be the voice for the people of my generation for Cannabis

Do you currently belong to any organizations specifically related to the area of your choice(s) you wish to serve on?

Kachemak Cannabis Coalition

Please answer the following if you are applying for the Advisory Planning Commission:

Have you ever developed real property, other than your personal residence, if so briefly describe? No

Please answer the following if you are applying for the Port & Harbor Advisory Commission:

Do you use the Homer Port and/or Harbor on a regular basis? What is your primary use?

Commercial

Recreational

Please include any additional information that may assist the Mayor in his/her decision making:

When you have completed this application please review all the information and return to the City Clerk's Office . You may also email this document to clerk@cityofhomer-ak.gov or fax to 907-235-3143. Thank you for applying!



City of Homer

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Office of the City Clerk

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MEMORANDUM

TO: CANNABIS ADVISORY COMMISSION

FROM: RENEE KRAUSE, CMC, DEPUTY CITY CLERK

DATE: APRIL 20, 2016

SUBJECT: NEXT MEETING DELIVERABLES AND AGENDA ITEMS

Please discuss and request from Staff what you would like to have on the agenda for the next meeting for discussion or action by the Commission.

Recommendation
Informational In Nature. No Action Required.

2015/2016 MEETINGS
CANNABIS ADVISORY COMMISSION

Following are the regular meeting dates established for the Commission. All meetings will be in Council Chambers unless otherwise noted and start at 5:30 p.m.

<u>Meeting Date</u>	<u>Packet Deadline</u>
December 17, 2015	December 9 th
January 28, 2016	January 20, 2016
February 25, 2016	February 17, 2016
March 24, 2016	March 16, 2016
April 28, 2016	April 20, 2016
May 26, 2016	May 18, 2016
June 23, 2016	June 15, 2016
July 28, 2016	July 20, 2016
August 25, 2016	August 17, 2016
September 22, 2016	September 14, 2016
October 27, 2016	October 19, 2016
November 29, 2016 (Tuesday)	November 18, 2016
December 15, 2016	December 8, 2016

If a commissioner wishes to add an item on the agenda that would be relevant to the discussion/action of the commission please submit or drop off at the Clerk's Office no later than Noon on the packet deadline date.

Commissioners may email requests for information or materials that they would like in the packet to the clerk, Renee Krause at rkrause@ci.homer.ak.us or staff, Rick Abboud at rabboud@ci.homer.ak.us.

The Clerk will email a draft agenda to the Chair and Staff no later than 4:00 p.m. on the packet deadline day. The Chair and Staff are requested to return the approved agenda with any additions and corrections to the Clerk no later than 10:00 a.m. the following day so that the meeting packet can be produced and available for distribution no later than 3 p.m.

2016 HOMER CITY COUNCIL MEETINGS
CANNABIS ADVISORY COMMISSION ATTENDANCE

It is the goals of the Commission to have a member speak regularly to the City Council at council meetings. There is a special place on the council’s agenda specifically for this. After Council approves the consent agenda and any scheduled visitors it is then time for staff reports, commission reports and borough reports. That is when you would stand and be recognized by the Mayor to approach and give a brief report on what the Commission is currently addressing, projects, events, etc. **A commissioner is scheduled to speak and has a choice at which council meeting they will attend. It is only required to attend one meeting during the month that you are assigned.** However, if your schedule permits please feel free to attend both meetings. Remember you cannot be heard if you do not speak.

The following Meeting Dates for City Council for 2016 is as follows:

The following Meeting Dates for City Council for 2016 is as follows:

January 11, 25 2016	_____	_____ Alt. Lewis or Reynolds _____
February 8, 22 2016	<u>Sarno</u> _____	_____ Alt. Lewis or Reynolds _____
March 14, 28 2016	<u>Stead</u> _____	_____ Alt. Lewis or Reynolds _____
April 11, 25 2016	_____	_____
May 9, 23 2016	_____	_____
June 13, 27 2016	_____	_____
July 25 2016	_____	_____
August 8, 22 2016	_____	_____
September 12, 26 2016	_____	_____
October 10, 24 2016	_____	_____
November 28 2016	_____	_____
December 12, 2016	_____	_____

Please review and if you will be unable to make the meeting you are tentatively scheduled for please Notify the Chair who may contact another commissioner or attend the meeting.

Introduced by: Mayor, Ogle, Gilman
Substitute Introduced: 02/23/16
O2016-07 (Mayor, Ogle, Gilman): See Original for Prior History
Hearing: 02/23/16
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-07
(MAYOR, OGLE, GILMAN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB CHAPTER 7.20 AND ENACTING KPB CHAPTER
7.30 REGARDING LOCAL PROTESTS OF STATE MARIJUANA LICENSES**

WHEREAS, during the November 4, 2014 general election, Alaska voters approved initiative Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana, which provided for the State development of regulations and requirements for commercial marijuana establishments, and legalized possession and personal use of marijuana by persons 21 years of age or older; and

WHEREAS, Ballot Measure 2 allows municipalities in the State, including the borough, to prohibit and/or implement regulations governing the number, time, place and manner of marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and retail marijuana stores (marijuana establishments); and

WHEREAS, KPB Resolution 2015-013, adopted March 17, 2015, established the Marijuana Task Force for the purpose of researching, advising, and making recommendations to the borough assembly; and

WHEREAS, the KPB Marijuana Task Force received a memorandum dated July 28, 2015, from Kenai Peninsula Borough Mayor Mike Navarre instructing the Task Force to primarily focus on potential borough regulation of the marijuana industry, if any; and

WHEREAS, the United States Department of Justice has issued guidance (the "Cole" memoranda dated February 14, 2014, and August 29, 2013) describing marijuana-related federal enforcement priorities, including "Preventing the distribution of marijuana to minors" and "Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;" and

WHEREAS, the Marijuana Task Force, finds that the goal of protecting the public health, safety, and welfare is furthered by preventing the distribution of marijuana to minors and preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; and

WHEREAS, pursuant to KP.B 2.56.006, the document entitled "2005 Kenai Peninsula Borough Comprehensive Plan" has been adopted as the borough's comprehensive plan; and

WHEREAS, the 2005 Kenai Peninsula Borough Comprehensive Plan identified in Goal 6.6 the goal to reduce conflicts arising from incompatible land uses outside of incorporated cities; and

WHEREAS, the Marijuana Task Force supported certain standards and conditions for marijuana establishments at its January 20, 2016, meeting; and

WHEREAS, a borough process addressing marijuana establishments should complement the state licensing process rather than duplicate it;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KP.B 7.20.010(B) is hereby amended as follows:

7.20.010 Local Regulatory Authority.

...
B. The assembly is authorized to comment to the State of Alaska Marijuana Control Board on marijuana establishment license applications within the Kenai Peninsula Borough consistent with the standards set forth in AS 17.38, [AND] 3 AAC 306, and KP.B 7.30. A public hearing shall be held by the assembly prior to submitting the borough's comments on a license application, transfer, relocation or renewal to the State of Alaska.
...

SECTION 2. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter to be numbered KP.B 7.30 which shall read as follows:

CHAPTER 7.30. - MARIJUANA LICENSE PROTESTS

7.30.010. Assembly review—Applications—Renewals—Hearings—Action.

- A. The assembly shall review and make recommendations to the state on applications submitted to the State Marijuana Control Board for marijuana establishment licenses, or the renewal of a license, within the borough in the following situations:
1. applications for a new license; or
 2. applications requesting approval of a relocation of the licensed premises; or
 3. applications requesting the renewal of a license; or

4. applications requesting approval of a transfer of a license to another person.
- B. Prior to the assembly making a recommendation to the Marijuana Control Board the planning commission shall hold a public hearing and make a recommendation to the assembly on the license application applying the standards set forth in KP.B 7.30.020. The planning department shall prepare a staff report for the planning commission addressing items set forth in KP.B 7.30.020. Notice of the public hearing shall be given in accord with the provisions of KP.B 21.11.
 - C. After assembly public hearing, review and action as provided in KP.B 7.30.010(A) and 7.30.020, the borough clerk shall provide a letter to the State of Alaska Marijuana Control Board informing it of the assembly's non-objection, protest, or recommended conditional approval as appropriate.

7.30.020. Assembly review—Standards.

A. The assembly shall cause a protest to be filed with the State of Alaska Marijuana Control Board on any application submitted for a new marijuana license, or any application requesting approval of a relocation of the licensed premises, or any application requesting approval of a transfer of a license to another person, or the application for renewal of a license, within the borough, in the following situations:

1. Where borough records indicate that the applicant and/or transferor is in violation of the borough sales, and/or personal and real property tax ordinances and regulations, has any unpaid balance due on tax accounts for which the applicant and/or transferor is liable or has failed to comply with any of the filing, reporting or payment provisions of the borough ordinances or regulations. A protest shall not be filed for balances due secured by a payment agreement authorized by borough ordinances, as long as:
 - a. the applicant or transferor is in compliance with the payment agreement; and
 - b. the payment agreement requires payment in full by the end of the next license year; and
 - c. the applicant or transferor is involved in no more than two payment agreements within the prior five (5) years.
 - d. Notwithstanding the provisions of this subsection, the borough is not required to file a protest if the transferor and/or applicant have made satisfactory arrangements with the borough for the discharge of a tax obligation from the proceeds of the transfer or by payment from the person to whom the license is to be transferred. Further, if the proposed transferee holds a security interest in the license or licensed premises and seeks the transfer as part of an action

foreclosing or protecting that security interest the borough will not protest a transfer to the holder of the security interest so long as satisfactory arrangements have been made by the transferee to pay the delinquent taxes in accordance with this chapter and other provisions of the borough code and no other provisions of this chapter would cause or allow a protest to be made.

B. Marijuana establishments shall not:

1. be located within 1,000 feet of any school. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer parcel boundaries of the school.
2. be located within 500 feet of a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the recreation or youth center, or the main public entrance of the building in which religious services are regularly conducted, or the correctional facility.
3. be located within a local option zoning district.

C. Marijuana establishments shall:

1. be located where there is sufficient ingress and egress for traffic to the parcel including
 - a. The approach shall be constructed to a minimum of 28 feet in width where it accesses a borough right-of-way;
 - b. There shall be no parking in borough rights-of-way generated by the marijuana establishment;
 - c. The site development shall delineate a clear route for delivery vehicles which shall allow vehicles to turn safely;
 - d. on-site parking and loading areas shall be designed to preclude vehicles from backing out into the roadway; and
2. not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m. each day; and
3. be current in all Kenai Peninsula Borough obligations consistent with KPB 7.30.020(A); and
4. maintain a state license issued pursuant to AS 17.38 and 3 AAC 306.

D. Applicant is responsible for complying with all federal, state and local laws applicable to marijuana. By issuing a recommendation to the Marijuana

Control Board the borough is not authorizing the violation of local, state, or federal law.

- E. The assembly may recommend conditions on a license to meet the following standards: protection against damage to adjacent properties, offsite odors, noise, visual impacts, road damage, and criminal activity, and protection of public safety.

7.30.900. Definitions.

Unless the context requires otherwise, the following definitions apply:

"*Marijuana*" has the meaning given in Alaska Statute 17.38.900.

"*Marijuana cultivation facility*" means an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

"*Marijuana establishment*" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store as defined in AS 17.38.

"*Marijuana product manufacturing facility*" means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

"*Marijuana products*" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

"*Marijuana testing facility*" means an entity registered to analyze and certify the safety and potency of marijuana.

"*Registered*" means issued a registration or license by the State of Alaska.

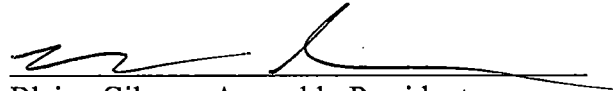
"*Retail marijuana store*" means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

"*Recreation or Youth Center*" means a building, structure, athletic playing field, or playground

- (A) Run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors; or
- (B) Operated by a public or private organization licensed to provide shelter, training, or guidance for persons under 21 years of age.

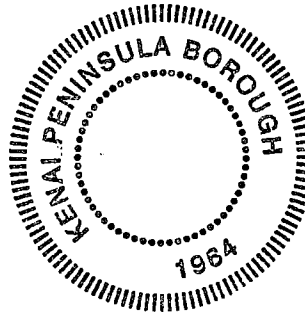
SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 23RD DAY OF FEBRUARY, 2016.


Blaine Gilman, Assembly President

ATTEST:


Johni Blankenship, MMC, Borough Clerk



Yes: Bagley, Dunne, Holmdahl, Johnson, Knopp, Ogle, Welles, Gilman
No: None
Absent: None

KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

144 North Binkley Street
Soldotna, AK 99669
Phone 907-714-2160
Fax 907-714-2388

Blaine Gilman, Assembly President
Brent Johnson, Vice President

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Gary Knopp, Assembly Member *GK*

DATE: February 23, 2016

RE: Amendment of Ordinance 2016-07 (Substitute), regarding amending KPB Chapter 7.20 and enacting KPB Chapter 7.30 regarding local protests of state marijuana licenses

I propose the following amendment to this ordinance:

- Amend KPB 7.30.020(C) in Section 2 as shown in **bold and underline** and [BOLD, SMALL CAPS, BRACKETED] as follows:

7.30.020. - Planning commission protest.

C. Marijuana establishments shall:

1. be located where there is sufficient ingress and egress for traffic to the parcel;
and
2. not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m. each day; and
3. be current in all Kenai Peninsula Borough obligations consistent with KPB 7.30.020(A); and
4. maintain a state license issued pursuant to AS 17.38 and 3 AAC 306.
5. **not allow consumption of marijuana on site.**

KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

144 North Binkley Street
Soldotna, AK 99669
Phone 907-714-2160
Fax 907-714-2388

Blaine Gilman, Assembly President
Brent Johnson, Vice President

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Dale Bagley, Assembly Member *DLB*

DATE: February 23, 2016

RE: Amendment of Ordinance 2016-07 (Substitute), regarding amending KPB Chapter 7.20 and enacting KPB Chapter 7.30 regarding local protests of state marijuana licenses

I propose the following amendments to this ordinance:

➤ Delete the ninth Whereas clause as follows:

[WHEREAS, ORDINANCE 2016-05 ESTABLISHES THE PLANNING COMMISSION AS THE COMMENTARY AGENCY TO THE MARIJUANA CONTROL BOARD REGARDING LICENSING FOR MARIJUANA ESTABLISHMENTS; AND]

➤ Amend KPB 7.20.010(B) in Section 2 as shown in **bold and underline** and **[BOLD, SMALL CAPS, BRACKETED]** as follows:

7.20.010 Local Regulatory Authority.

...

B. The **[PLANNING COMMISSION] assembly** is authorized to comment to the State of Alaska Marijuana Control Board on marijuana establishment license applications within the Kenai Peninsula Borough consistent with the standards set forth in AS 17.38, **[AND]** 3 AAC 306, and KPB 7.30. A public hearing shall be held by the [PLANNING COMMISSION] assembly prior to submitting the borough's comments on a license application, transfer, relocation or renewal to the State of Alaska.

- Amend KPB 7.30.010 in Section 2 as shown in **bold and underline** and [BOLD, SMALL CAPS, BRACKETED] and switch paragraphs B and C as shown below:

7.30.010. – [PLANNING COMMISSION] **Assembly** review—Applications—Renewals--**Hearing**.

- A. The [PLANNING COMMISSION] **assembly** shall review applications submitted to the State Marijuana Control Board for marijuana establishment licenses, or the renewal of a license, within the borough in the following situations:
1. applications for a new license; or
 2. applications requesting approval of a relocation of the licensed premises; or
 3. applications requesting the renewal of a license; or
 4. applications requesting approval of a transfer of a license to another person.

B[C]. Prior to the assembly making a recommendation to the Marijuana Control Board [T]the planning commission shall hold a public hearing and make a recommendation to the assembly on the license application applying the standards set forth in KPB 7.30.020. [PRIOR TO MAKING A RECOMMENDATION TO THE MARIJUANA CONTROL BOARD.] The planning department shall prepare a staff report for the planning commission addressing items set forth in KPB 7.30.020. Notice of the public hearing shall be given in accord with the provisions of KPB 21.11.

C[B]. After [PLANNING COMMISSION] assembly public hearing, review and action as provided in KPB **7.30.010(A) and** 7.30.020, the borough [PLANNING DEPARTMENT] **clerk** shall provide a letter to the State of Alaska Marijuana Control Board informing it of the [PLANNING COMMISSION'S] **assembly's** non-objection, protest, or recommended conditional approval as appropriate.

- Amend the title of KPB 7.30.020 and introductory paragraph of KPB 7.30.020(A) in Section 2 as shown in **bold and underline** and [BOLD, SMALL CAPS, BRACKETED] as follows:

7.30.020. - [PLANNING COMMISSION] **Assembly review—Standards. [PROTEST.]**

- A. The [PLANNING COMMISSION] **assembly** shall cause a protest to be filed with the State of Alaska Marijuana Control Board on any application submitted for a new marijuana license, or any application requesting approval of a relocation of the licensed premises, or any application requesting approval of a transfer of a license to another person, or the application for renewal of a license, within the borough, in the following situations:

...

- Amend KPB 7.30.020(E) in Section 2 as shown in **bold and underline** and [BOLD, SMALL CAPS, BRACKETED] as follows:

- E. The [PLANNING COMMISSION] **assembly** may recommend conditions on a license to meet the following standards: protection against damage to adjacent properties, offsite odors, noise, visual impacts, road damage, and criminal activity, and protection of public safety.

THE CANNABIS CONUNDRUM



The changing legal landscape for marijuana use puts banks in several difficult spots

By Megan Michiels

A national conversation and policy discussion about the business of marijuana is taking place right now, and the eventual outcome will be important to the banking industry. What has long been seen as a criminal issue has now become a business issue, too.

If your bank is not operating in a state where marijuana has been legalized, that could change soon. Twenty states and the District of Columbia allow some use of medical marijuana; Colorado and Washington have gone further and legalized recreational use (see table). On Jan. 1, 2014, state-licensed retailers in Colorado opened to sell marijuana to anyone 21 years old or older. Retail sales in Washington are expected to begin later this year.

The trend among states shows no sign of reversing. Medicinal-use bills have been filed in Kentucky, Minnesota, Pennsylvania, Tennessee, and Wisconsin. Medicinal-use bills are expected to be introduced in

PHOTO: ISTOCKPHOTO.COM

Maryland, West Virginia, and Wyoming. Full-legalization bills have been introduced in New Hampshire and Vermont. New York Governor Andrew Cuomo announced he would sign an executive order authorizing an interim medical marijuana program. California Lt. Governor Gavin Newsom is leading a panel studying how the state can tax and regulate a fully legalized marijuana market.

Regardless of state initiatives, marijuana remains illegal under the federal Controlled Substances Act. Financial institutions that knowingly accept proceeds from marijuana transactions may be exposed to civil and criminal liability. To avoid federal scrutiny or risk prosecution, banks have refused to accept business from the marijuana industry.

Consequently, state-sanctioned marijuana enterprises are becoming cash-only operations without access to banking services. The unbanked dollars are considerable. Marijuana vendors in Colorado sold approximately \$1 million of product on the first day the drug was available for retail sale. According to ArcView Market Research, nationwide “legal” marijuana sales exceeded \$1.4 billion in 2013 and are estimated to reach \$2.3 billion in 2014.

Federal and state barriers

Even if banks are willing, they face significant risk if they offer banking services to marijuana-related businesses. The federal statutory barriers include the Controlled Substance Act, USA Patriot Act, Bank Secrecy Act, and the Racketeer Influenced and Corrupt Organizations Act.

In Congress, the Marijuana Businesses Access to Banking Act of 2013 (H.R. 2652) was introduced by Rep. Ed Perlmutter (D-Colo.). The bill would create protections for depository institutions that provide financial services to marijuana-related businesses authorized under state law. The bill currently has 24 cosponsors from 12 states, but has not made it out of committee.

A state-level solution proposed by Washington State Senator Bob Hasegawa would create a publicly owned state bank to serve the marijuana industry. However, a state-owned bank that knowingly violates federal narcotics and money laundering laws could not hold FDIC insurance and would, therefore, be prohibited from accessing payments systems overseen by the Federal Reserve.

So far, mostly uncertainty

The calls for clarity on how to navigate this uncharted territory are mounting from businesses, politicians, and bankers. In October 2013, Colorado Governor John Hickenlooper and Washington Governor Jay Inslee asked federal financial regulators for interagency guidance to enable the banking industry to legally offer banking services to state marijuana licensees. In their letter, the governors point out that, “Access to the banking system by these state-licensed businesses is a necessary component in ensuring a highly regulated marijuana system that will

accurately track funds, prevent criminal involvement, and promote public safety.”

Marijuana-derived fees and taxes are collected and deposited into governments’ banks accounts. It has been asserted that government deposits of marijuana-related funds are not subject to federal seizure, because tax money is legal even if the proceeds are derived from an illegal activity—but this is not entirely clear. Institutions with municipal- and state-client accounts would benefit from assurance that they can continue to bank government accounts that include marijuana-related deposits.

Speaking at the American Bankers Association/American Bar Association Anti-Money Laundering Enforcement Conference in November 2013, Financial Crimes Enforcement Network Director Jennifer Shasky Calvery acknowledged the predicament and complexity of the issue. Director Shasky Calvery stated that discussions amongst the Department of Justice, Department of Treasury, and

State Marijuana Laws

States	Medicinal	Recreational	Proposed
Alaska	✓		
Arizona	✓		
California	✓		
Colorado	✓	✓	
Connecticut	✓		
Delaware	✓		
DC	✓		
Georgia			✓ (SR 756)
Hawaii	✓		
Illinois	✓		
Kentucky			✓ (SB 43)
Maine	✓		
Maryland			✓ (SB tbd)
Massachusetts	✓		
Michigan	✓		
Minnesota			✓ (HF 2099)
Missouri			✓ (HB 1324)
Montana	✓		
Nevada	✓		
New Hampshire	✓		✓ (HB 492)
New Jersey	✓		
New Mexico	✓		
New York			✓ (Exec. Order)
Oregon	✓		
Pennsylvania			✓ (SB 1182)
Rhode Island	✓		
Tennessee			✓ (HB 1385)
Vermont	✓		✓ (SB 306)
Washington	✓	✓	
West Virginia			✓ (HB tbd)
Wisconsin			✓ (AB 480/SB 363)
Wyoming			✓ (HB tbd)
Total	21	2	13

other financial regulators are underway to seek a resolution.

In December 2013, the Bank Secrecy Act Advisory Group (BSAAG) held a meeting to begin talks on reforming banking regulations to allow banks to engage in services in the marijuana business. The advisory group is a task force comprised of officials from Treasury, Justice, federal and state regulators, and industry participants, including the ABA. BSAAG meetings are confidential.

The outcome of such discussions remains uncertain. At this stage, a guidance memorandum for marijuana-related businesses and banking seems the most probable.

According to the *Wall Street Journal*, the Department of Justice is drafting a memorandum to federal prosecutors that will provide some guidance for financial institutions. It is expected that the guidance will prioritize financial enforcement efforts on transactions that serve as a front for other illegal activity or are a part of larger drug cartel activities. However, it appears unlikely that a memorandum along these lines will clearly immunize banks.

Where does all this leave banks?

Regulatory guidance would be helpful, but alone it is unlikely to quash banker woes about the legal consequences of servicing marijuana businesses. As long as federal statute classifies marijuana as a controlled substance, the risk of criminal charges and seizure of assets associated with these businesses is a significant deterrent to the banking industry to take on, as clients, those in the budding market.

Banks are faced with complying with the law and determining how to best protect the interests of their institutions. Banks may want to review and verify personal and business customer account rolls to assure that no prohibited relationships exist. However, it is conceivable that marijuana businesses have open and active bank accounts without explicit knowledge of the financial institution. Recent press articles have highlighted instances of marijuana businesses' reliance on preexisting accounts or even deceptive tactics to access banking services. Presumably though, bank compliance with the due diligence requirements and their responsibilities for maintaining systems designed to detect and report suspicious activities would uncover these deceptions.

Banks will want to consider the potential impact on their interests or operations if a marijuana business has some connection to an existing customer. It would be useful to address this *before* a critical decision must be made or *before* a bank loses the collateral that secures a loan.

Banks may want to review existing loan collateral, particularly in real estate transactions. Financial institutions cannot lend against inventory or receivables that are illegal. For example, if a commercial mortgage is secured by a shopping center, a lease to a marijuana dispensary could leave the entire loan effectively unsecured. In the fall of 2011, federal prosecutors in California notified real property owners, landlords, and lenders whose loans were



As long as federal statute classifies marijuana as a controlled substance, the risk of criminal charges is a significant deterrent to banks taking on these clients

secured by real property occupied by medical marijuana dispensaries that under federal law their real and personal property interests were subject to seizure and forfeiture without compensation and free from a lender's lien interest in the property. If possible, institutions may consider amending loan documents or security interests to include representations and warrants that no federally illegal drugs are grown, sold, or used on the property or in connection with the loan funds.

Things to consider

Things could get complicated fast if banking access opens up to the marijuana industry. Maintaining adequate risk management policies, reviewing existing products, and adapting employment practices are just a few of the concerns for banks. They also should review policies to ensure federal laws are not violated and to avoid additional regulatory scrutiny. Also, banks may need to implement additional compliance procedures if new rules are required to transact with marijuana businesses.

Institutions also may need to review existing procedures for some of their traditional banking products. Take, for example, a small business loan to a marijuana shop. A typical loan would be secured by the store's inventory and accounts receivable. In the case of marijuana inventory, a bank will have to determine if it will accept marijuana inventory and proceeds as collateral. This also raises questions in the event of default of whether a bank would need to be licensed to repossess and resell the inventory. ■

Disclaimer: This information does not provide, nor is it intended to substitute for, professional legal advice.

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Alaska Dispatch News

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[Home](#) > Marijuana social clubs dwindle in Alaska as legal confusion reigns

DJ Summers | Alaska Journal of Commerce

April 17, 2016

Main Image:

[WeedClubs05.JPG-1435865626](#) ^[1]

Main Image Caption:

Paula Collins and Brandt Cryer sign up new members at the entrance to Pot Luck Events, which hosted a comedy show at its location on 3rd Avenue in Anchorage on July 1, 2015. The club describes itself as a marijuana-friendly private club.

Anchorage's Pot Luck Events is the only marijuana social club still operating without a legal challenge, as statewide puzzlement to their legality produces a patchwork of local controls.

Fairbanks' The Higher Calling and Homer's Kachemak Cannabis Club have both closed, and the City of Kenai is seeking an injunction against Green Rush Events.

The clubs, which allow dues-paying members to share and consume cannabis but do not sell it themselves, inhabit either a murky legal area or a clearly defined one, depending on whom you ask.

The Marijuana Control Board and several localities have asked the state to clarify the law, but the Legislature's only action on marijuana clubs has been a statewide smoking ban that incidentally applies to marijuana clubs and has stalled in the House Judiciary Committee chaired by Rep. Gabrielle LeDoux, R-Anchorage.

Marijuana social clubs are distinct from marijuana cafes. State regulations allow for onsite consumption at locations attached to retail cannabis stores. The state hasn't yet issued any retail licenses, however, and these onsite marijuana cafes will have to wait until late 2016 to open along with the rest of the commercial marijuana industry once a legal crop is available to sell.

In the meantime, localities deal with marijuana clubs on their own in the absence of clarity from the Alaska Legislature.

Down to one

Of the state's marijuana social clubs, Pot Luck Events alone is both open and without any pending legal challenge.

In early April, The Higher Calling club in downtown Fairbanks closed its doors. Owner Marcus Mooers said the club closed due to low membership, not political pressure, having had too few members to sustain itself.

Homer's Kachemak Cannabis Club closed in March, on the heels of the Homer police chief's conversation with Alcohol and Marijuana Control Office Director Cynthia Franklin, during which she told him clubs are illegal. Chief Mark Robl said the club closed for internal reasons, the city had not initiated any kind of action to close it, and had planned to use enforcement as a last resort.

Other clubs are still open, but only until the locality fulfills its intent to close them.

In early April, the Kenai city council directed city attorney Scott Bloom to seek an injunction against Green Rush Events. The council decided the club violates an ordinance passed by the Kenai council in January that

placed a moratorium on clubs.

The ordinance specifies that in the absence of state clarity, it is taking matters into its own hands.

"It is in the best interest of the City of Kenai to establish a moratorium prohibiting the consumption of marijuana and marijuana products in Retail Marijuana Stores and Marijuana Clubs, until further guidance is provided by the Marijuana Control Board or State Legislature ensuring minimum health and safety standards are met to protect consumers," reads the ordinance.

Bloom said Green Rush Events has since switched its business model; it now charges nothing for entry, and sells no beverages. Bloom will determine whether or not this violates ordinance and issue an injunction accordingly. In the meantime, the club is still open.

Confusion reigns

Authorities have no public consensus on marijuana social club legality. State marijuana officials disagree while local officials flip-flop between marijuana club prohibition and allowance.

Franklin says clubs are clearly illegal, but city officials, newspapers, and the chairman of the Marijuana Control Board are under the impression they aren't.

Throughout the marijuana regulation process, Franklin has stayed resolute that marijuana clubs violate regulation, which forbids cannabis consumption in public places, defined as "any place to which the public or a substantial portion of the public are invited."

Club owners say Franklin's interpretation is incorrect, as their clubs charge membership fees and are only open to patrons over the age of 21, making them private businesses, not public places. Franklin argues this makes them no more private than a movie theater.

Bruce Schulte, chairman of the Marijuana Control Board, has repeatedly emphasized that the board has not made social clubs illegal and awaits legislative action to establish the license type or to ban them.

The board struck down a proposed club ban in 2015 and issued a ruling that it had no authority to regulate one way or another. Ballot Measure 2, which legalized recreational marijuana in Alaska through a voter initiative in 2014, does not specify social clubs as a license type. The board's authority to regulate clubs depends on the Legislature changing statute to add the license.

If clubs are indeed illegal, the state has remained silent at the enforcement level.

No state law enforcement agencies have brought any charges against clubs or their patrons. This differs from other marijuana businesses that fell against state legal action.

The owners of Discreet Deliveries, Alaska Cannabis Club, and Absolutely Chronic Delivery Company -- three companies the state alleges sold cannabis without state licenses -- were each charged with felonies in 2015.

The uncertainty leaks down to the municipal level.

When Kachemak Cannabis Club was burglarized in mid-February, Robl, the Homer police chief, said his force wouldn't take action against the club's existence, the Homer News reported.

"That's the board's position. Right now they've reached an impasse where these clubs are not expressly permitted or prohibited," Robl said. "They're allowing them to operate provided there's no proof of other violations of law."

However, only weeks later on Feb. 25, Alaska Public Media reported Robl said he'd had a misperception that clubs were not illegal, and learned otherwise from an unnamed "Alcohol and Marijuana Control Board member."

In a later interview with the Alaska Journal of Commerce, Robl revealed the member he spoke with was Franklin.

Robl's new legal interpretation had no chance to be implemented, however, as the club closed down of its own accord in March.

The Fairbanks club went through a tangle of local control attempts. Fairbanks Councilman David Pruhs sponsored a measure that would have banned the club, then withdrew it in mid-January. Pruhs said the state needs to decide.

"I am giving the people of this industry time to work with the state and rectify this one way or another. I don't believe in shutting down a business so soon when there might be a chance that this could become a legal activity," he said at the time.

After the ban's withdrawal, The Higher Calling continued operations until it folded in late March. Even with Pruhs's ban withdrawn, however, the borough still had concerns.

In an April 7 editorial, the Fairbanks Daily News-Miner responded to a proposed ordinance from Fairbanks North Star Borough Assemblyman Christopher Quist that would ban all marijuana businesses without state licensure.

"It's hard to blame Mr. Quist for wanting to provide that clarity at a borough level, given the number of businesses capitalizing on the loophole and the inaction on it thus far," reads the editorial.

"But the state is the authority that should make the determination, and the borough should take its lead from that decision. It's past time for the matter of marijuana clubs to be sorted out."

The Anchorage Assembly had planned to discuss marijuana social clubs, but member Ernie Hall advised them March 22 to halt marijuana considerations after a conversation with Franklin, during which he was advised that the state is still considering several marijuana-related items.

State silence

With most legislative bandwidth taken by a \$4.1 billion budget deficit, the Legislature has stayed away from marijuana clubs. No bill to create a license type has surfaced, nor any plans to craft one.

The only bill directly pertinent to clubs has stalled and shows no sign of movement before lawmakers adjourn. Rather than directly addressing the licensing issue, the bill incorporates a de facto public marijuana smoking ban into a larger anti-smoking measure.

The pair of anti-tobacco bills had moved successfully through both chambers, but stalled in the House Judiciary Committee. House Bill 328 and companion Senate Bill 1 would enact a statewide ban on smoking in any public place except tobacco stores deriving 90 percent of their income from tobacco sales.

The bill includes vape pens, e-cigarettes, and any other "plant intended for inhalation."

An amendment from Rep. Adam Wool, R-Fairbanks, that would exempt marijuana businesses hasn't yet been adopted.

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**LOCAL GOVERNMENTS
AND
MARIJUANA REGULATION**

**A Resource Guide for the
City of Homer, Alaska**

[Based on the laws in effect as of March 8, 2016]

(Rev. April 2, 2016)

CREATED BY:

Birch Horton Bittner & Cherot

Holly C. Wells
Katie Davies
Jason Brandeis

The content on this resource guide is offered only to provide background and information regarding the regulation of the commercial marijuana industry in Alaska based on the laws in effect as of the date published on the cover of this guide. This guide does not nor is it intended to constitute legal advice. This guide should not be used as a substitute for obtaining legal advice from an attorney licensed or authorized to practice in your jurisdiction. The comments and opinions expressed in this resource guide are those of the individual attorneys and may not reflect the opinions of the firm or any individual attorney in the firm.

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PART ONE: INTRODUCTION

Recent changes to Alaska’s marijuana laws create significant legal challenges for state and local regulators. In November 2014, Alaska voters approved Ballot Measure 2 (BM2), an act that legalized¹ personal recreational marijuana use and possession and allowed for the creation of a commercial marijuana industry that would tax and regulate marijuana in a manner similar to alcohol.² The effective date of the laws enacted by BM2 was February 24, 2015. On that date, personal possession of marijuana for recreational use became legal in the state, but commercial activity was still not permitted. Rather, on that date a nine-month rulemaking period began for the Alaska Marijuana Control Board (MCB) to craft the regulatory framework for the industry.³ That process was completed on November 20, 2015.⁴ Then, pursuant to the Alaska Administrative Procedures Act (APA), the final regulations were submitted to the Lieutenant Governor and Department of Law for review. Numerous edits and

¹ Like Colorado’s Amendment 64 and Washington’s Initiative 502, Alaska’s Ballot Measure 2 is credited with having “legalized” marijuana, but that term is misleading. “Legalized” implies that an activity is no longer subject to any criminal or civil penalties. When in fact, marijuana remains a Schedule VIA controlled substance under the Alaska Criminal Code, and failure to comply with state laws regulating marijuana cultivation, use, and sale can result in a penalty, ranging from a civil fine to felony prosecution. Thus, more accurately, Ballot Measure 2 legalized some marijuana conduct, decriminalized other conduct, and kept some conduct illegal. Despite these technicalities, the terms “legalize” and “decriminalize” are often used interchangeably. See David Blake & Jack Finlaw, *Marijuana Legalization in Colorado: Learned Lessons*, 8 Harv. L. & Pol’y Rev. 359, 362 n.13 (2014); Jason Brandeis, *Ravin Revisited: Alaska’s Historic Common Law Marijuana Rule at the Dawn of Legalization*, 32 Alaska L. Rev. 309, 311 n.4 (2015).

² 2014 Ballot Measure No. 2 - 13PSUM An Act to Tax and Regulate the Production, Sale, and Use of Marijuana (Act). Initiative summary text available at: <http://www.elections.alaska.gov/doc/bml/BM2-13PSUM-ballot-language.pdf>. Full initiative text here: https://www.commerce.alaska.gov/web/portals/9/pub/MJ_BallotMeasure2.pdf

³ AS 17.38.080; AS 17.38.090(a). The 2014 General Election vote was certified on November 24, 2014. Statutes enacted by ballot measure take effect 90 days later. The effective date of implementation for BM2 was February 24, 2015. See “What is the timeline for implementation of the proposition?” at <https://www.commerce.alaska.gov/web/abc/MarijuanaInitiativeFAQs.aspx>. If the board has not adopted regulations by this date, local governments have the option of establishing their own regulations. AS 17.38.110.

⁴ The MCB adopted final marijuana industry regulations on November 20, 2015, and amended them on December 1, 2015.

corrections were made, and two regulatory provisions were rejected.⁵ The final regulations, found in 3 AAC 306, took effect on February 21, 2016.⁶

On February 24, 2016, the MCB began accepting marijuana establishment license applications, as required by statute.⁷ The MCB announced that it will issue cultivation and testing facility licenses first, with retail and product manufacturing licenses to follow. Such a sequence is intended to ensure that retail and manufacturing licensees will have access to legally grown and tracked marijuana for their inventories before opening for business. Additionally, all license holders will be required to use a specific marijuana inventory tracking system to assure that marijuana sold in licensed retail stores was grown, produced and tested by licensed establishments. The MCB has stated that no licenses will be issued before the tracking system is implemented. The anticipated date of implementation is May 23, 2016.

The MCB's tentative timeline contemplates approving the first marijuana cultivation and testing facility license applications in early June, and retail and manufacturing facility licenses in early September. Thus, by this fall, Alaska will be one of just four states where people will be able to lawfully grow, buy, and sell recreational⁸ marijuana through a state-approved regulatory system.

⁵ The Department of Law rejected regulations that required a national criminal history check and created an exemption to the testing facility requirement depending on certain geographic location and transportation limitations. See <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=102193>. Legislation is currently being considered that would resolve the criminal history check issue and provide authority for the MCB to seek a national criminal history check for those applying for a license to operate a marijuana establishment.

⁶ The final regulations, reflecting the edits made by the Department of Law and signed by the Lieutenant Governor, are available here: https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/3AAC_306_FINALCLEANCOPY.pdf. However, an official copy of the regulations will not be published until April 2016.

⁷ AS 17.38.100(b) requires the MCB to begin accepting and processing applications to operate marijuana establishments one year after the effective date of the Act, February 24, 2016.

⁸ The terms "recreational" and "medical" refer to the purpose for which marijuana use is authorized by law, not necessarily to a distinct type of marijuana, though there are certain strains of marijuana and marijuana derivatives which lack psychoactive properties and are therefore usually exclusively used for medical purposes. See Limited Access Marijuana Product Laws, Nat'l Conf. of State Legislatures, <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx#Table%202>; Julie Anderson Hill, *Banks, Marijuana, and Federalism*, 65 Case W. Res. L. Rev. 597, 598 n.2 (2015). Recreational marijuana laws allow marijuana use for any personal purpose, and the sale of recreational-use marijuana is referred to as retail sale. See generally John Hudak, *Colorado's Rollout of Legal Marijuana Is Succeeding: A Report on the State's Implementation of Legalization*, 65 Case W. Res. L. Rev. 651 (2015). Conversely, medical marijuana laws require a physician's certification that an individual has a medical condition for which marijuana is a treatment. People may then use this reason as a defense against criminal

Such a significant shift raises several legal concerns. First, marijuana remains prohibited by federal law. The Controlled Substances Act (CSA) makes it a federal crime to use, possess, or sell marijuana. The legalization of marijuana at the state level also poses conflicts with federal tax and commerce laws. Second, the ballot initiative tasked the State of Alaska's Alcoholic Beverage Control (ABC) Board with crafting regulations to govern the production, sale, possession, and use of marijuana. That responsibility then shifted to a newly formed MCB,⁹ and that process was just recently completed. No licenses have been fully reviewed, granted, or denied at this time. Nor have any municipal governments had an opportunity to weigh in on license applications. Thus, though there is a complete regulatory framework now in place, the full legal landscape of marijuana regulation in Alaska has yet to unfold.

This is significant, and this process must be closely monitored because the regulations, and nascent industry, will affect or involve nearly every area of legal expertise, including administrative law, banking, contracts, criminal law, employment law, intellectual property, land use and zoning, real estate, regulatory compliance, tax law, and torts. Further, the regulatory process has not resolved all of the legal issues raised by marijuana legalization. Additional statutory changes will be needed to mesh the marijuana regulations with existing state statutes and regulations, as well as with Alaska's existing common law rule governing personal marijuana use and Alaska's medical marijuana act. Finally, local jurisdictions will have significant input into managing marijuana businesses within their borders, including the opportunity to opt-out of certain aspects of the marijuana industry and the responsibility for monitoring compliance with public health, fire, safety, and tax ordinances.

This resource guide provides general background on marijuana use and production, summarizes federal marijuana laws and Alaska state marijuana laws and regulations, and discusses issues related to local government administration of a marijuana industry within its borders. Given the role that local governments will play in investigating and enforcing the state regulations, as well as any locally-imposed conditions and requirements, it is important for municipalities to consider developing their own protocols and to be familiar with the state regulations governing inspection, license suspension and revocation, seizure of marijuana and marijuana products, and all public health and safety standards applicable to the marijuana industry.

charges for use and possession of marijuana. In some states, medical marijuana laws allow for the purchase and sale of marijuana for medicinal use.

⁹ See 2015 SCS CSHB 123(FIN) available at <https://www.commerce.alaska.gov/web/portals/g/pub/HB-123.pdf>

PART TWO: MARIJUANA PRODUCTION AND CONSUMPTION TERMINOLOGY¹⁰

Marijuana is the general term for a preparation of the female¹¹ cannabis plant or its dried flowers for use as a psychoactive drug or medication. For most, this term connotes the stereotypical image of greenish dried plant matter that can be rolled in a paper "joint" or smoked in a pipe. While this type of consumption is still prevalent, methods of marijuana production and consumption have become quite varied in recent years; there are now numerous ways to prepare marijuana for consumption, and even more ways to actually consume it. To be effective, regulations governing marijuana use, cultivation, production, and sale must reflect current production and usage trends.

Understanding the law of marijuana regulation first requires a familiarity with the terminology of the marijuana industry. To begin, marijuana is sought out because it contains cannabinoids, chemical compounds unique to the cannabis plant, which are absorbed into the bloodstream upon use and then carried to the brain where they act upon the human brain's cannabinoid receptors. There are two main cannabinoids which produce significant effects: Tetrahydrocannabinol (THC), a psychoactive component that may produce feelings of euphoria, relaxation, or increased appetite; and Cannabidiol (CBD) which is often used as a medical treatment for pain, inflammation, anxiety, and to manage seizures without the psychoactive effects (the "high" or "stoned" feeling) associated with THC. Different strains of the cannabis plant contain varying proportions of THC and CBD.

¹⁰ Information in this section is collected from several sources: (1) a white paper prepared by the Coalition for Responsible Cannabis Legislation (CRCL) and provided to the State of Alaska (available at http://commerce.state.ak.us/dnn/Portals/9/pub/CRCL_White_paper_provided_by_Coalition_for_Responsible_Cannabis_Legislation.pdf). The state seems to respect CRCL's views (two members of that group were appointed to the Alaska Marijuana Control Board; one presumes they will use their group's understanding of the terms in their official board work (<https://www.adn.com/article/20150701/walker-names-appointees-alaskas-first-marijuana-control-board>); (2) Wikipedia ([https://en.wikipedia.org/wiki/Cannabis_\(drug\)](https://en.wikipedia.org/wiki/Cannabis_(drug))); (3) Leafly (<https://www.leafly.com/news/cannabis-101/glossary-of-cannabis-terms>); and The Cannabist (<http://www.thecannabist.co/2014/06/13/marijuana-terms-and-definitions-cannabis-lexicon-glossary-pot-terminology/13174/>).

¹¹ Female plants are distinct from male plants in that they are the ones that produce flowers which contain the high percentage of cannabinoids that hold both their psychoactive and medicinal properties.



*MARIJUANA FLOWER/BUD*¹²

As stated above, the most historically common form of marijuana and means of consuming marijuana was to smoke part of the plant—to heat the plant material directly until it burned and then to inhale the smoke, either through a cigarette/joint or a pipe of some sort. The part of the plant that is smoked is the flower. Also referred to as “bud(s)” these are the “hairy,” sticky, fluffy, crystal-covered parts of the plant located at the top of the plant stalks. Buds are harvested and used for recreational or medicinal purposes, as they are the part of the plant that contains the highest concentrations of active cannabinoids.¹³ Buds are dried and cured before consumption.

¹² Licensed under Creative Commons Public Domain (<https://pixabay.com/p-269857/>).

¹³ Other parts of the plant, such as the “fan leaves” (found on the upper part of the plant) or the “sugar leaves” (found nearest the flowers) do not contain high levels of THC and are often discarded. However, “trim,” which refers to any leftover plant material (including the leaves and flowers) may be processed to produce kief, hash oil, or other concentrates. The stalks of the cannabis plant are used in the production of hemp. It is worth noting that all parts of the cannabis plant are included in the definition of marijuana, discussed below.



DRIED MARIJUANA FLOWER/BUD¹⁴

As the rate of consuming marijuana by smoking marijuana flowers has decreased, consumption of marijuana derivatives called “concentrates” has increased. Concentrates have gained in popularity because they offer a more potent consolidation of THC than the traditional flower buds. The main forms of marijuana concentrates are:

- Kief: Kief is a collected amount of trichomes that have been separated from the cannabis plant. Trichomes are the resin production glands of the cannabis plant, appearing as small outgrowths on the surface of the flowers and upper leaves of the cannabis plant. They are often described as hairs or crystals, though technically they are neither. THC, CBD and other cannabinoids are all produced in these glands.

¹⁴ " Licensed under Public Domain via Wikimedia Commons (https://commons.wikimedia.org/wiki/File:Bubba_Kush.jpg#/media/File:Bubba_Kush.jpg).



*MARIJUANA BUD WITH TRICHOMES*¹⁵

Kief is separated from the rest of the plant by mechanical or thermal processes (e.g., sieve, filter, freezing the flowers allows the trichomes to be shaken off and gathered). Since the trichomes contain the majority of the cannabinoids, kief is known to be extremely potent. Kief can be smoked or eaten by itself or used to create hash, oils, or edible products.

¹⁵ Licensed under Public Domain via Wikimedia Commons (<https://commons.wikimedia.org/wiki/File:Kolkata-Kut.jpg#/media/File:Kolkata-Kut.jpg>).



*KIEF*¹⁶

- Hash (or hashish): Hash is kief (essentially a powder of pure trichomes) pressed into a small block of solid material.

¹⁶ "Kief (yellow)" by Mjpresson - Own work. Licensed under CC BY 3.0 via Wikimedia Commons ([https://commons.wikimedia.org/wiki/File:Kief_\(yellow\).jpg#/media/File:Kief_\(yellow\).jpg](https://commons.wikimedia.org/wiki/File:Kief_(yellow).jpg#/media/File:Kief_(yellow).jpg)).



HASH/HASHISH¹⁷

- Hash Oil: An extract produced by exposing cannabis plant material to a solvent and then evaporating the solvent. What remains is a sticky resinous dark oily liquid. Hash oil can be consumed directly into the lungs, or used to create edible products or tinctures. Hash oil has become very popular because of its high potency.

Some extractors used in the hash oil production process are similar in design to a coffee machine, where the solvent drips through the marijuana and leaches out the cannabinoids. The process for extraction can also be similar to that used to extract lavender oils, vanilla extract, or other familiar oils and extracts.

¹⁷ Licensed under Public Domain via Wikimedia Commons (<https://commons.wikimedia.org/wiki/File:Hashish-2.jpg#/media/File:Hashish-2.jpg>).



*HASH OIL*¹⁸

- Butane Hash Oil ("BHO"): BHO is a potent concentrate made by dissolving marijuana buds or flowers in a solvent (usually butane). The resulting product has very high THC levels and presents a thick, sticky oil, a moldable goo, or plastic-like resinous bits depending on the exact manufacturing method. The various forms of BHO may be referred to as honey oil, dabs, earwax, wax, shatter, or ice.

¹⁸ "Drop of cannabis oil" by Ryan Bushby(HighInBC). Licensed under CC BY 2.5 via Wikimedia Commons (https://commons.wikimedia.org/wiki/File:Drop_of_cannabis_oil.jpg#/media/File:Drop_of_cannabis_oil.jpg).



*BUTANE HASH OIL*¹⁹

This extraction method has generated significant controversy. Individuals who attempt to extract hash oil in their homes often use butane, which is easy to procure, but is also a volatile flammable gas. In an uncontrolled environment (such as the home), butane hash oil extraction can lead to fires and explosions. It is important to note that the danger lies in the extraction method (using butane), not the product of the extraction (hash oil), which itself is not volatile.

¹⁹ Photo by Andres Rodriguez (available at <https://www.flickr.com/photos/symic/8283444548/in/photolist-dGbYqo-dBT0NT-dGbJsN-di6oNz-dG6jf8-dBYPid-dpm2WP-dCzfgH-dsQJEj-dBYPts-dyMt4o-dsQyCa-dBrLv-dsQz1z-dpm386-dCzfx3-dCzfDq-dG6DFa-dsQJnq>)



BUTANE HASH OIL "HONEY"²⁰



SHATTER

²⁰ By Vjiced - Own work. Licensed under CC BY-SA 3.0 via Wikimedia Commons (<http://creativecommons.org/licenses/by-sa/3.0>).

- Tincture: A tincture is a liquid marijuana extract made with alcohol or glycerol. Tinctures are made by extracting cannabinoids from marijuana flowers using high-proof spirits. Tinctures are ordinarily consumed orally by using a dropper to place the tincture under the tongue. Tinctures can also be applied to the skin.



*TINCTURE*²¹

- Infusions: Leaves, flowers, or concentrates may be infused into a solvent (such as butter, cooking oil, glycerin, or skin moisturizer) and then used to prepare marijuana foods (edibles) or applied topically.

²¹ "Homemade Tincture" by Nekenasoa (<https://flic.kr/p/s8jK98>).



MAKING MARIJUANA BUTTER²²

In short, concentrates are typically made either by removing and collecting the trichomes from the flower/bud; or by dissolving the flowers/buds into a solvent thereby extracting the THC. The resulting product has a very potent THC count and can take many forms, including a powder, a solid brick, a liquid, or a viscous oil.

²² "Cannabutter" by Realclark at English Wikipedia. Transferred from en.wikipedia to Commons. Licensed under Public Domain via Wikimedia Commons (<https://commons.wikimedia.org/wiki/File:Cannabutter.jpg#/media/File:Cannabutter.jpg>).



MARIJUANA BUTTER INFUSION²³

There are three main ways in which marijuana concentrates are consumed: eating, “vaping,” or “dabbing.”

- Eating marijuana is straightforward: one ingests an edible marijuana product. “Edibles” include a broad range of foods that have been infused with marijuana extracts. Edible products commonly include baked goods such as cookies and brownies, but have expanded to include other confections, candies, and beverages.²⁴

A subset of edibles includes “adulterated” food or drink products. These are food products which existed without marijuana in a form ready for consumption to which

²³ “Cannabis Butter” by Cannabis Training University - Own work. Licensed under CC BY-SA 3.0 via Wikimedia Commons (https://commons.wikimedia.org/wiki/File:Cannabis_Butter.JPG#/media/File:Cannabis_Butter.JPG).

²⁴ Since most marijuana regulations are tied to the weight of the marijuana in question, it is important to note that the total weight of an edible product includes all of the ingredients that combined to make the product. The total weight of the product does not equal the weight of the marijuana concentrate used to introduce THC into the recipe. AS 17.38.900g(6) specifies that “marijuana” does not include “the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.”

marijuana was subsequently added. For example, candy bars or Gummy Bears sprayed down with a marijuana concentrate and then repackaged and sold.



MARIJUANA COOKIE W/LABEL²⁵

- “Vaping” refers to using a vaporizer to consumer marijuana. Vaporizers heat marijuana-infused oils (or parts of the plant itself) to a temperature that produces a cannabinoid-laced vapor to inhale. Many believe vaporizing is healthier than smoking since there is no smoke to ingest; nothing is burned in a vaporizer. Vaporizers are now very compact (similar to e-cigarettes) and have correspondingly gained in popularity.
- “Dabbing” involves dropping marijuana concentrates onto a heated surface (such a skillet or a nail) and inhaling the resulting fumes/smoke/vapor.

²⁵ "KCCS Cookie" by Subvertc - Own work. Licensed under CC BY-SA 3.0 via Wikimedia Commons (https://commons.wikimedia.org/wiki/File:KCCS_Cookie.JPG#/media/File:KCCS_Cookie.JPG).

PART THREE: OVERVIEW OF FEDERAL AND STATE MARIJUANA LAWS

State and federal laws governing the regulation of marijuana can be quite different. Marijuana use, possession, and distribution are prohibited under federal law and as such carry strict criminal penalties. For many years, all state marijuana laws largely mirrored federal law and banned marijuana. Recently a number of states, including Alaska, have enacted marijuana laws that diverge from the federal prohibition. Alaska is one of 23 states (and Washington, D.C.) whose laws permit medical marijuana use, and is one of four states where a taxed and regulated commercial marijuana industry will exist for recreational marijuana.

Understanding the distinctions between federal and state marijuana laws, as well as where those laws overlap, is crucial for lawmakers and regulators in states with marijuana industries.

Federal Marijuana Prohibition

In 1970, the federal government enacted the Controlled Substances Act (CSA), a comprehensive drug law that classified substances in five different categories (referred to as schedules) according to their medical value, potential for danger, and likelihood of addiction and abuse.²⁶ Penalties for violation of each schedule varied, with Schedule I substances considered the most dangerous, and therefore the most restricted, with harsh punishments for possession, use, or distribution.

Marijuana is listed as a Schedule I narcotic because it has “a high potential for abuse,” “no currently accepted medical use in treatment,” and “a lack of accepted safety for use of the drug or other substance under medical supervision.”²⁷ Other drugs included in Schedule I include ecstasy, heroin, LSD, and peyote.²⁸ Under the CSA, criminal penalties for use, possession, and sale of marijuana are serious and can include life in prison depending upon the amount of marijuana involved and the circumstances surrounding the conviction.²⁹ The CSA remains in force and the Supreme Court has upheld the federal government’s ability to regulate marijuana.³⁰ Federal courts have

²⁶ 28 U.S.C. § 801 et seq.

²⁷ 21 U.S.C. § 812, (b)(1)(A)–(C).

²⁸ 21 U.S.C. §§ 812(b)(1), 812(c)(c)(10) (2012).

²⁹ 21 U.S.C. § 841(b) (2012).

³⁰ *Gonzales v. Raich*, 545 U.S. 1, 22 (2005).

also repeatedly affirmed the Drug Enforcement Agency's (DEA) decision to keep marijuana in Schedule I.³¹

Despite this federal prohibition, over the past 20 years a number of states have passed laws decriminalizing or legalizing limited types of marijuana use within their borders. Beginning with California in the mid-1990s, states started passing medical marijuana laws, which allowed the use of marijuana to treat certain health conditions. Alaska was among the first four states to enact such a law, approving a medical marijuana law by ballot initiative in 1998. Currently, 23 states and Washington, D.C. permit some level of marijuana use for medical purposes, though the details vary by jurisdiction.³²

In response to increased acceptance at the state level, and growing popular and political support for medical marijuana, federal policy began to shift. In 2009, the "Ogden Memo," prepared by the Obama Administration's Department of Justice, announced a significant change. The "Ogden Memo" explained that federal resources should not focus on prosecuting individuals acting in concert with their state's marijuana laws.³³ This was viewed as a "hands-off"³⁴ policy toward enforcement of federal marijuana laws in states where marijuana use was authorized under those states' laws. However, in 2011, in response to the expansion of marijuana industries in several states, the Department of Justice explained that the Ogden Memo had been misread by those who saw it as a "green light" to begin large-scale marijuana production.³⁵ The "Cole Memo" stepped federal policy back from the Ogden Memo by clarifying that state and local laws permitting marijuana activity were not a defense to federal

³¹ *Americans for Safe Access v. Drug Enforcement Admin.*, 706 F.3d 438, 440–41 (2013). There is significant debate as to whether marijuana belongs in this schedule. See, e.g., Erwin Chemerinsky, *Cooperative Federalism and Marijuana Regulation*, 62 *UCLA L. Rev.* 74, 82 at n.22 (2015).

³² See <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881> for a complete list and restrictions/requirements for each law.

³³ In that memorandum, Deputy Attorney General David Ogden wrote to U.S. Attorneys around the country, providing them with enforcement priority guidance: "As a general matter, pursuit of [federal] priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." U.S. Dep't of Justice, Office of the Deputy Attorney General, *Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana 1–2* (2009). Available at: <http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf>

³⁴ Chemerinsky at 87.

³⁵ *Id.*

prosecution.³⁶ A number of enforcement actions followed, or were threatened, and wound up shutting down numerous medical marijuana businesses operating in accordance with state laws throughout the country.³⁷

The November 2012 general election brought the need for an additional federal statement about state-level marijuana regulation. There, voters in Colorado and Washington approved ballot measures that would legalize personal recreational marijuana use for adults 21 years and older and to allow the licensed commercial sale of marijuana. These laws repealed criminal penalties for possession of small amounts of marijuana and directed the state legislatures to create frameworks to tax and regulate the production and sale of marijuana for recreational purposes. These two states would now allow adults to lawfully purchase and sell marijuana for recreational purposes—not just marijuana for medical use—in retail establishments.

In response, the United States Department of Justice (DOJ) explained that while it remains committed to enforcing the federal marijuana prohibition, it would not immediately take legal action to attempt to overturn the Colorado and Washington laws. Instead it would take a “trust but verify” approach. The “Cole Memo II” outlined several key parts of this new policy: it allowed the Colorado and Washington recreational marijuana legalization laws to go into effect; permitted medical marijuana distributors and suppliers operating in compliance with state laws to continue; and reiterated that federal resources should not be used to prosecute seriously ill medical marijuana patients, their caregivers, or individuals who possess small amounts of marijuana for other personal uses.³⁸

The linchpin of the policy is that it requires state governments to take an active role in creating and implementing “strong and effective regulatory and enforcement systems” to mitigate the potential harm legalization and decriminalization could pose to public health, safety, and other law enforcement efforts. If state regulatory protocols are eventually found to be insufficient, DOJ could challenge the states’ regulations themselves and/or bring individual enforcement or criminal actions.

³⁶ *Id.* at 88; U.S. Dep’t of Justice, Office of the Deputy Attorney General, Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (2011) [hereinafter Cole Memo], available at <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>

³⁷ Kamin, *The Limits of Marijuana Legalization in the States*, Iowa L. Rev. Bulletin, Vol. 99.39 at 40-41 (2014) (available at: http://ilr.law.uiowa.edu/files/ilr.law.uiowa.edu/files/ILRB_99_Kamin.pdf).

³⁸ Cole Memo II (available at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>)

The memo also identified eight instances where federal marijuana laws would still be enforced by DOJ, irrespective of state laws, in order to prevent:

- distribution of marijuana to minors;
- revenue from marijuana sales going to criminal enterprises;
- exportation of marijuana from states where it is legal to states where it is not;
- the use of state-authorized marijuana activity as a cover or pretext for other illegal activity;
- violence and use of firearms in the cultivation and distribution of marijuana;
- driving under the influence of marijuana and other public health consequences associated with marijuana use;
- growing marijuana on public lands; and
- marijuana use or possession on federal property.

In short, at this time, the federal government will largely leave states alone to regulate marijuana within their borders, so long as the regulatory processes are sufficiently strict, federal concerns are addressed, and potential negative consequences are minimized. This approach respects state sovereignty and allows state-level marijuana legalization experiments to continue. However, the shift from the Ogden Memo policy to the federal government “flexing its muscle” under the Cole Memo and then back to an even more relaxed approach with the Cole Memo II illustrates the danger of relying too heavily on such executive policies. Such policies can change without notice and without formal legislative or court action. Essentially, DOJ has made a non-binding promise to forestall enforcement of the federal marijuana prohibition—a promise which exists at the whim of the current executive with no guarantee it will be continued by the next administration.³⁹

This leaves the states that have “legal-but-not-entirely-legal”⁴⁰ marijuana in a precarious situation. In addition to the fear of arrest, criminal prosecution, and asset forfeiture for marijuana professionals (growers, the owners and employees of dispensaries, investors, etc.) other difficulties exist that can stall the development of a legal marijuana industry. Section 280E of the Internal Revenue Code prohibits marijuana business operators from deducting operating expenses, such as rent and the costs of paying employees, from their taxes.⁴¹ This puts marijuana businesses at a serious disadvantage and makes running a marijuana business very difficult. Another

³⁹ See Blake & Finlaw at 362 n.6 (2014).

⁴⁰ Chemerinsky at 113 (2015).

⁴¹ See Kamin at 45; Leff, *Tax Planning for Marijuana Lawyers* (available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226416).

burden is the difficulty marijuana businesses have in obtaining basic banking services.⁴² The original Cole Memo warned financial institutions that knowingly engaging in transactions involving the proceeds of activities known to be violating the CSA may also be in violation of federal drug laws, federal money laundering laws, and other federal commerce and financial laws. As a result, banks and credit card companies have ceased working with marijuana businesses, leaving the marijuana industry mostly a cash-only enterprise. This requires businesses to keep lots of cash on hand, to pay their employees and tax bills with cash, sets them up as prime crime targets, and makes it more difficult to track sales, enforce tax payments, and prevent illegal diversion. State and local jurisdictions must also wrestle with questions about contract law (whether contracts with marijuana businesses may be deemed unenforceable), employment law (such as whether employees can be terminated for off-duty marijuana use), and whether marijuana use can be a grounds for revocation of probation or parole.⁴³

The federal government has taken limited action to remedy these problems. In February 2014, the U.S. Department of Justice and the U.S. Department of the Treasury issued joint statements on how banks could work with marijuana businesses. Adherence to strict guidelines was required and many banking institutions were still hesitant to enter the industry due to fear of fines or other penalties. At the end of 2014, the U.S. Treasury Department's Financial Crimes Enforcement Network reported there were 105 banks and credit unions working with legal-state marijuana companies. In late 2015, a survey found that 60% of legal marijuana businesses do not have bank accounts.

The recently passed federal budget included several marijuana provisions. One prevents the Department of Justice and the Drug Enforcement Agency from spending any money on interfering with state medical marijuana laws, the other prevents the DOJ and the DEA from using funding to interfere with state research programs for industrial hemp.⁴⁴

Over the past few years, Congress has considered several other pieces of legislation aimed at remedying this tension between state and federal law. To date, none of these bills "have gained much traction."⁴⁵ Examples include bills that would:

- remove marijuana from the CSA schedule of drugs and the enforcement and punishment provisions of the federal code;⁴⁶

⁴² See Kamin at 47.

⁴³ *Id.* at 44-47.

⁴⁴ <http://www.adn.com/article/20151221/congress-softens-marijuana-policy-key-obstacles-remain-alaskas-path>

⁴⁵ See Chemerinsky at 113-14 (listing proposed bills).

- reschedule marijuana to allow marijuana for medical use in the states where medical marijuana has been legalized and to ensure “an adequate supply of marijuana is available for therapeutic and medicinal research;”⁴⁷
- amend the asset forfeiture provisions of the CSA to prohibit the seizure of real property used in activities performed in compliance with state marijuana laws;⁴⁸
- prohibit the DEA and the DOJ from spending taxpayer money to raid, arrest, or prosecute medical marijuana patients and providers in states where medical marijuana is legal;⁴⁹
- prohibit any provision of the CSA from being applied to any person acting in compliance with state marijuana laws;⁵⁰ and
- provide legal immunity from criminal prosecution to banks and credit unions providing financial services to marijuana-related businesses acting in compliance with state law.⁵¹

Alaska State Marijuana Laws

Much like the federal Controlled Substances Act, on its face the Alaska Criminal Code prohibits all marijuana-related activity.⁵² There are, however, three exceptions to

⁴⁶ Ending Federal Marijuana Prohibition Act of 2013, H.R. 499, 113th Cong. § 101 (2013). Federal law would continue to prohibit trafficking and the unlicensed cultivation, production, manufacturing, and sale of marijuana.

⁴⁷ States’ Medical Marijuana Patient Protection Act, H.R. 689, 113th Cong. § 4 (2013).

⁴⁸ States’ Medical Marijuana Property Rights Protection Act, H.R. 784, 113th Cong. § 3 (2013).

⁴⁹ H. Amdt. 748, 113th Cong. (2013–14) (amending Commerce, Justice, Science, and Related Agencies Appropriations Act, H.R. 4660, 113th Cong. (2013–14)).

⁵⁰ Respect State Marijuana Laws Act of 2013, H.R. 1523, 113th Cong. § 2 (2013).

⁵¹ Marijuana Business Access to Banking Act of 2013, H.R. 2652, 113th Cong. § 3 (2013).

⁵² See AS 11.71.060(a)(1) (stating penalty for display of any amount of marijuana). However, Alaska has historically rated marijuana offenses as among the least serious of all drug offenses and continues to classify it as a Schedule VIA substance—a drug with the lowest degree of danger to a person or the public. *Waters v. State*, 483 P.2d 199, 201 (Alaska 1971) (finding an absence of foundation for characterization of marijuana offender as the worst type of drug offender for sentencing purposes); AS 11.71.190(a), (b).

Alaska’s general proscription of marijuana which allow marijuana use under state law in limited circumstances. The first is the result of the ballot measure enacted by Alaska voters in 2014. Ballot Measure 2, titled “An Act to tax and regulate the production, sale, and use of marijuana,” created new state statutes that permit persons over 21 years of age to use marijuana for recreational purposes and instructed the Alaska Legislature to develop a regulatory scheme for the taxation and regulation of recreational marijuana production and sale.⁵³ Alaska is now one of just four states that will allow the taxation and regulation of retail recreational marijuana. The second exception comes from the Medical Uses of Marijuana for Persons Suffering from Debilitating Medical Conditions Act, originally passed by voters as another ballot in 1998.⁵⁴ This law permits individuals who have consulted with a doctor and registered with the state to use marijuana to treat “debilitating medical conditions.”⁵⁵ The last exception comes from the *Ravin* Doctrine, a common law rule created through a series of state court decisions beginning in 1975. *Ravin* allows adults over 19 to possess a small amount of marijuana in the home for personal use.⁵⁶

These three exceptions are discussed in greater detail in a subsequent section.

Interplay Between Federal and State Marijuana Laws

As explained above, the CSA makes all marijuana possession, use, and sale illegal, and violations of the CSA’s marijuana provisions carry steep criminal penalties. Thus, those who use, possess, grow or sell marijuana in compliance with state laws that tax and regulate medical or recreational marijuana still violate federal law and can be prosecuted for doing so. The idea that the same conduct could be legal and illegal in the same jurisdiction at the same time is a complicated and confusing concept. The legal question raised here, whether the federal CSA preempts, and thereby renders invalid, state laws that conflict with the CSA, hovers over all discussions of changes to state and local marijuana law and policy.

Federal preemption of state laws is based on the U.S. Constitution's Supremacy Clause, which states that federal law is “the supreme law of the land” and it trumps conflicting state laws. The constitutional question at issue turns on whether state laws legalizing marijuana create such an impermissible “conflict” such that the CSA prohibits any and all marijuana use and possession. No federal court has answered the broad question of

⁵³ See generally AS 17.38 et seq.

⁵⁴ AS 17.37.080.

⁵⁵ AS 17.37.070(4).

⁵⁶ Brandeis at 337.

whether the federal CSA preempts state laws that conflict with the CSA, and full analysis of this question is beyond the scope of this guide.⁵⁷ In short, legal scholars cite the Tenth Amendment’s anti-commandeering rule as the counterbalance that protects a state’s ability to enact marijuana legislation that diverges from federal policy. The anti-commandeering rule precludes the federal government from forcing states to enact coexistent, or even complimentary, controlled substance laws, or from requiring state officers to enforce federal drug laws within the state.⁵⁸ States can therefore experiment with different legalization and decriminalization programs, but the resulting state-federal relationship is complicated and potentially antagonistic.

⁵⁷ Several state courts have ruled against local government officials seeking to invalidate state medical marijuana laws as preempted by federal law. The U.S. Supreme Court denied certiorari when it was sought in these cases. See Chemerinsky at 102; Robert A. Mikos, *On the Limits of Supremacy: Medical Marijuana and the States’ Overlooked Power to Legalize Federal Crime*, 62 Vand. L. Rev. 1421 (2009).

⁵⁸ *New York v. United States*, 505 U.S. 144, 162 (1992) (“[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions”); *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that Congress cannot compel states to enact or enforce a federal regulatory program); Mikos, *On the Limits of Supremacy* at 1446 (“The preemption power is constrained by the Supreme Court’s anti-commandeering rule. That rule stipulates that Congress may not command state legislatures to enact laws nor order state officials to administer them.”).

PART FOUR: THE LEGAL STATUS OF MARIJUANA IN ALASKA

As explained above, Alaska's marijuana laws are unique in the nation. Three other states, Colorado, Washington, and Oregon, currently allow personal possession and retail sale of limited amounts of marijuana for recreational use.⁵⁹ Twenty-two other states and Washington, D.C. allow some form of marijuana cultivation, sale, and use for medicinal purposes. Only Alaska combines recreational and medical marijuana legalization with a common-law right to personal marijuana use in the home. The result is a complex system that permits limited marijuana use under various fact-specific circumstances based on three separate bodies of law. Whether marijuana-related activity is permitted under Alaska law ultimately depends on the location of the activity, the amount of marijuana in question, and the age of the possessor.

It is important to note that the term "marijuana" can refer to numerous derivatives of the cannabis plant, all taking different forms, having different methods of consumption, and containing varying levels of psychoactive chemicals.

The Alaska Statutes currently contain two definitions for marijuana. The most recent was added by 2014 Ballot Measure 2, which defines marijuana as:

all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with

⁵⁹ Pursuant to Oregon Ballot Measure 91 (passed November 2014), Oregonians may currently grow limited amounts of marijuana on their property and possess limited amounts of recreational marijuana for personal use. This home grow/personal possession provision took effect on July 1, 2015. The Oregon Liquor Control Commission (OLCC) also has the authority to tax, license and regulate recreational marijuana grown, sold, or processed for commercial purposes. The OLCC will begin accepting applications for growers, wholesalers, processors and retail outlets on January 4, 2016, with the ability for consumers to buy marijuana at a retail outlet expected to start during the fall of 2016 (<http://www.oregon.gov/olcc/marijuana/Pages/Frequently-Asked-Questions.aspx>).

In late July the Governor of Oregon signed a bill that will allow medical marijuana dispensaries in Oregon to sell small amounts of marijuana to adults over 21 for recreational purposes beginning on October 1, 2015. That law will sunset on December 31, 2016 (<http://www.reuters.com/article/2015/07/30/us-usa-marijuana-oregon-idUSKCN0Q404520150730>; <http://whatslegaloregon.com/#gift-or-share>).

marijuana to prepare topical or oral administrations, food, drink, or other products.⁶⁰

This definition incorporates the different methods of marijuana production and consumption described above, but it differs slightly from the preexisting definition found in the Alaska Criminal Code.⁶¹ The main difference is that the statutory definition created by the initiative specifically includes “resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.”⁶² Conversely, the previous definition specifically excludes “the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol” from the definition of marijuana.⁶³ This is significant because the new definition allows for marijuana derivatives and concentrates such as hash and hash oil to be considered “marijuana,” listed as a Schedule VIA controlled substance (one with the least potential for harm and danger) instead of being separately listed as a Schedule IIIA controlled substance, which has a higher degree of probable danger and a corresponding greater penalty for use.⁶⁴

The incongruence between these definitions illustrates the complexity of modern marijuana regulation. “Traditional” marijuana, the actual flowers and buds, or other smokeable THC-containing parts of the cannabis plant, are now consumed/used apace with other marijuana derivatives, such as edibles and concentrates.⁶⁵

⁶⁰ AS 17.38.900(6).

⁶¹ The Alaska Criminal Code states the following:

“marijuana” means the seeds, and leaves, buds, and flowers of the plant (genus) Cannabis, whether growing or not; it does not include the resin or oil extracted from any part of the plants, or any compound, manufacture, salt, derivative, mixture, or preparation from the resin or oil, including hashish, hashish oil, and natural or synthetic tetrahydrocannabinol; it does not include the stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the stalks, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. AS 11.71.900(14).

⁶² AS 17.38.900(6).

⁶³ AS 11.71.900(14).

⁶⁴ AS 11.71.060(f)(1),(2).

⁶⁵ The statutes created by BM2 provide some additional clarification by defining terms such as “marijuana products” (“concentrated marijuana products and marijuana products that are

Personal Marijuana Use, Possession, Cultivation, and Transfer

Recreational Marijuana

Alaska law allows individuals to possess and use marijuana for recreational (i.e., non-medical) purposes. The following acts are legal under Alaska state law, if performed by persons 21 years of age or older:

- Possessing, using, displaying, purchasing, or transporting one ounce or less of marijuana.⁶⁶
- Possessing, growing, processing, or transporting no more than six marijuana plants (with three or fewer being mature, flowering plants).⁶⁷
- Possession of the marijuana produced by lawfully-possessed marijuana plants on the premises where the plants were grown.⁶⁸
- Transferring one ounce or less of marijuana and up to six immature marijuana plants to a person who is 21 years of age or older without remuneration.⁶⁹
- Non-public⁷⁰ consumption⁷¹ of marijuana.⁷²
- Assisting another person who is 21 years of age or older with any lawful marijuana conduct described in AS 17.38.⁷³

comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures." AS 17.38.900(11)).

⁶⁶ AS 17.38.020(1).

⁶⁷ AS 17.38.020(2).

⁶⁸ AS 17.38.020(2).

⁶⁹ AS 17.38.020(3).

⁷⁰ "In public" means in a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence. 3 AAC 304.990(a)(6)(A)-(B). It does not include an area on the premises of a licensed marijuana retail store designated for on-site consumption. 3 AAC 306.990(a)(6)(C).

⁷¹ Consumption means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body. AS 17.38.900(3).

⁷² AS 17.38.020(4).

⁷³ AS 17.38.020(e).

- Possessing, using, displaying, purchasing, or transporting marijuana accessories.⁷⁴
- Manufacture, possess, or purchase marijuana accessories.⁷⁵
- Distribution or sale of marijuana accessories to a person who is 21 years of age or older.⁷⁶

Medical Marijuana

Alaska law allows individuals to possess and use marijuana to treat certain medical conditions under the direction of a physician.⁷⁷ An individual seeking to do so must first become a registered medical marijuana patient by submitting an application to join the Medical Marijuana Registry.⁷⁸ The application is submitted to the Alaska Bureau of Vital Statistics and must contain a physician's statement certifying that the patient suffers from a "debilitating medical condition"⁷⁹ and that the patient might benefit from the medical use of marijuana.⁸⁰ If the application is approved, the Division will then issue an identification card and add the applicant's name to the state registry of all authorized users.⁸¹

Registered patients may then possess up to one ounce of marijuana and six plants (of which only three can be flowering and producing usable marijuana at any time).⁸² They may not smoke marijuana in public, but may possess it in public under certain

⁷⁴ AS 17.38.010(1), .060.

⁷⁵ AS 17.38.060.

⁷⁶ AS 17.38.060.

⁷⁷ AS 17.37.010–17.37.080 (2012).

⁷⁸ Application available at: <http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/MedicalMarijuana.pdf>

⁷⁹ See AS 17.37.070(a)–(c) (broadly defining "debilitating medical condition" as including "cancer, glaucoma, positive status for immunodeficiency virus, or acquired immune deficiency syndrome" or any other chronic diseases, or treatment for such diseases, which produce "cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis.").

⁸⁰ AS 17.37.010(c).

⁸¹ AS 17.37.010.

⁸² AS 17.37.040(a)(4)(A)–(B).

conditions: the marijuana must be in a sealed container, the marijuana must be concealed, and the individual must be transporting it to a location where it is permissible to use it.⁸³

A medical marijuana patient may also designate a “primary caregiver” and an “alternative caregiver.”⁸⁴ The caregiver designation means patients with debilitating illnesses do not have to be responsible for procuring or cultivating their own marijuana; designated caregivers may possess marijuana to the extent the individual they are caring for can.⁸⁵

The medical marijuana law does not authorize patients or caregivers to buy or sell marijuana.⁸⁶ Registered medical marijuana patients and their caregivers have an affirmative defense to prosecution for marijuana-related activity that would otherwise violate state law.⁸⁷

The *Ravin* Doctrine

The Alaska Supreme Court’s 1975 decision in the case *Ravin v. State of Alaska* (“*Ravin*”) created a legal doctrine that permits adults (those over 19 years of age) to possess and use a modest amount of marijuana in their homes.⁸⁸ *Ravin* was based on an interpretation of the Alaska Constitution’s right of privacy. The court balanced that

⁸³ AS 17.37.040(a)(2)(A)–(C).

⁸⁴ AS 17.37.010(a).

⁸⁵ See AS 17.37.040(a)(3) (“a patient may deliver marijuana to the patient’s primary caregiver and a primary caregiver may deliver marijuana to the patient for whom the caregiver is listed”). Neither the Act nor the Alaska Administrative Code specifically defines the duties of a primary or alternative caregiver. See AS 17.37.010–17.37.080 (omitting a definition of a primary or alternative caregiver). However, the Act does explain that if the medicinal marijuana patient is a minor, the minor’s parent or guardian must serve as the primary caregiver and “control the acquisition, possession, dosage, and frequency of use of marijuana by the patient.” AS 17.37.010(c)(3). It follows that the caregiver for an adult patient would serve in a similar role.

⁸⁶ Alaska law only permits the primary caregiver to “deliver” marijuana to his or her patient, and vice versa. AS 17.37.040(a)(3). “Deliver” means the “actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.” AS 11.71.900(6). Conversely, such a noncommercial transfer is not permissible under *Ravin*. See *Wright v. State*, 651 P.2d 846, 849 (Alaska Ct. App. 1982) (“We conclude that non-commercial transfers of small quantities of marijuana must be deemed to fall within the ambit of the prohibition against distribution which is contained in AS 17.12.010.”).

⁸⁷ AS 17.37.030(a).

⁸⁸ 537 P.2d 494 (Alaska 1975).

right against the state’s interest in promoting public health and safety by banning all marijuana use. Ultimately, the court found that any potential negative impacts of recreational marijuana use by adults in the privacy of their homes were not harmful enough to justify a blanket marijuana ban.

The activity protected by the *Ravin* Doctrine (which includes *Ravin* and several subsequent opinions) is narrow. It only applies to personal use and possession of small amounts of marijuana in the privacy of the home (an amount currently understood by the Alaska courts as less than four ounces).⁸⁹ It does not permit transporting marijuana in public, commercial marijuana activity, any marijuana use by minors, or driving under the influence of marijuana.

Personal Marijuana Cultivation (“Home Grow”)

Alaska law allows people 21 years and older to cultivate marijuana for personal use (known as a “home grow”), subject to the following limitations:

- A person 21 years of age or older may grow up to six marijuana plants, three of which may be mature, flowering plants.⁹⁰
- Marijuana must be grown in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aids.⁹¹
- Marijuana plants must be secure from unauthorized access.⁹²
- Marijuana may only be grown on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property.⁹³
- Persons 21 and over may possess, purchase, distribute, or sell marijuana grow accessories.⁹⁴

⁸⁹ This four-ounce limit includes usable marijuana as well as the weight of any marijuana plants. See *Noy v. State*, 83 P.3d 538 (Alaska App. 2003). “For purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be one-sixth of the measured weight of the marijuana plant after the roots of the marijuana plant have been removed.” AS 11.71.080.

⁹⁰ AS 17.38.020(2).

⁹¹ AS 17.38.030(a)(1).

⁹² AS 17.38.030(a)(2).

⁹³ AS 17.38.030(a)(3).

⁹⁴ AS 17.38.060, AS 17.38.900(7).

Commercial Marijuana Production and Sale

Comparison of State Laws Regulating Commercial Marijuana Production and Sale

Colorado, Washington, Alaska, and Oregon have legalized the limited possession, cultivation, and recreational use of marijuana for adults 21 years old and over. Via ballot initiatives in 2012, Colorado and Washington became the first states to approve regulatory systems for retail recreational marijuana sales. Alaska and Oregon followed suit in 2014, and those states are in the process of implementing their regulatory frameworks.

The laws governing marijuana production, sale, and use in these four states share some similarities: for example, all four prohibit sales to persons under 21 and do not allow marijuana use in public. But there are significant differences as well: Washington does not permit any home cultivation for personal use; Alaska and Oregon levy excise taxes at the wholesale level based on the weight of the marijuana sold, whereas Colorado and Washington tax the value of wholesale and retail transactions; and Alaska is the only one of the four states without a designated revenue use plan for marijuana taxes; and licensure fees vary amongst the states.⁹⁵

Marijuana Establishments

The laws enacted as part of Ballot Measure 2 required state or local regulators to establish a system of licensing and control under which the commercial marijuana industry in Alaska would function. The Act did not instruct any public or private organization to establish retail outlets for sale of marijuana in Alaska, nor did it guarantee that any would exist. The ballot measure simply assumed that demand for retail marijuana existed in Alaska, and it allows for a regulated market to operate to meet that demand.

The act authorizes the operation of four types of “marijuana establishments”⁹⁶ in the state: marijuana cultivation facilities,⁹⁷ marijuana testing facilities,⁹⁸ marijuana product

⁹⁵ See LRS report to Sen. McGuire (11/28/14) at 1, Table 1. (available at: https://www.alaskasenate.org/2016/files/5614/1763/1020/Leg_Research_Report_on_Marijuana_Legalization.pdf).

⁹⁶ AS 17.38.900(9): “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

⁹⁷ AS 17.38.900(8): “an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.”

manufacturing facilities,⁹⁹ and retail marijuana stores.¹⁰⁰ Lawful operation of any such establishment is contingent upon a current, valid registration and all persons acting as owner, employee, or agent of the establishment must be at least 21 years of age.¹⁰¹

Lawful Activities of Marijuana Establishments

Notwithstanding any other provision of law, the following acts, when performed by one of the four types of marijuana establishments with a current, valid registration, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana establishment, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law.¹⁰²

Retail Marijuana Store¹⁰³

- (1) Possessing, displaying, storing, or transporting marijuana or marijuana products, except that marijuana and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-way;
- (2) Delivering or transferring marijuana or marijuana products to a marijuana testing facility;
- (3) Receiving marijuana or marijuana products from a marijuana testing facility;
- (4) Purchasing marijuana from a marijuana cultivation facility;
- (5) Purchasing marijuana or marijuana products from a marijuana product manufacturing facility; and
- (6) Delivering, distributing, or selling marijuana or marijuana products to consumers.

⁹⁸ AS 17.38.900(12): "an entity registered to analyze and certify the safety and potency of marijuana."

⁹⁹ AS 17.38.900(10): "an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers."

¹⁰⁰ AS 17.38.900(13): "an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers."

¹⁰¹ AS 17.37.080(a)-(d).

¹⁰² AS 17.38.070(e) provides that it is lawful under Alaska law to lease or otherwise allow property to be used as a marijuana establishment.

¹⁰³ AS 17.38.070(a)(1)-(6).

Marijuana Cultivation Facility¹⁰⁴

- (1) Cultivating, manufacturing, harvesting, processing, packaging, transporting, displaying, storing, or possessing marijuana;
- (2) Delivering or transferring marijuana to a marijuana testing facility;
- (3) Receiving marijuana from a marijuana testing facility;
- (4) Delivering, distributing, or selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store;
- (5) Receiving or purchasing marijuana from a marijuana cultivation facility; and
- (6) Receiving marijuana seeds or immature marijuana plants from a person 21 years of age or older.

Marijuana Product Manufacturing Facility¹⁰⁵

- (1) Packaging, processing, transporting, manufacturing, displaying, or possessing marijuana or marijuana products;
- (2) Delivering or transferring marijuana or marijuana products to a marijuana testing facility;
- (3) Receiving marijuana or marijuana products from a marijuana testing facility;
- (4) Delivering or selling marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility;
- (5) Purchasing marijuana from a marijuana cultivation facility; and
- (6) Purchasing of marijuana or marijuana products from a marijuana product manufacturing facility.

Marijuana Testing Facility¹⁰⁶

- (1) Possessing, cultivating, processing, repackaging, storing, transporting, displaying, transferring or delivering marijuana;
- (2) Receiving marijuana or marijuana products from a marijuana cultivation facility, a marijuana retail store, a marijuana products manufacturer, or a person 21 years of age or older; and
- (3) Returning marijuana or marijuana products to a marijuana cultivation facility, marijuana retail store, marijuana products manufacturer, or a person 21 years of age or older.

¹⁰⁴ AS 17.38.070(b)(1)-(6).

¹⁰⁵ AS 17.38.070(c)(1)-(6).

¹⁰⁶ AS 17.38.070(d)(1)-(3).

PART FIVE: ALASKA MARIJUANA INDUSTRY REGULATIONS

Regulatory Authority

Ballot Measure 2 granted the Alaska Legislature the authority to establish a Marijuana Control Board (MCB) to oversee the cultivation, manufacture, and sale of marijuana in the state.¹⁰⁷ In the absence of the creation of such a board, the authority for rulemaking and the promulgation of regulations would rest with the Alcoholic Beverage Control (ABC) Board.¹⁰⁸ The Alaska MCB was established in April 2015¹⁰⁹ and thus had nine months from the effective date of the Act (February 24, 2015) to adopt regulations consistent with the parameters set out in Ballot Measure 2. That process was completed on time.

Regulatory Guidance

As a preliminary matter, marijuana industry regulations were required to include and comply with the following:¹¹⁰

- Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a marijuana establishment;
- A schedule of application, registration, and renewal fees, provided that application fees shall not exceed \$5,000, with this upper limit adjusted annually for inflation, unless the board determines a greater fee is necessary to carry out its responsibilities under this chapter;

¹⁰⁷ AS 17.38.080.

¹⁰⁸ AS 17.38.080.

¹⁰⁹ See HB 123 (http://www.legis.state.ak.us/basis/get_fulltext.asp?session=29&bill=HB123). Board members are appointed by the Governor and confirmed by a majority vote of the legislature in joint session. AS 17.38.080(b). Board members are selected based on the following criteria: (1) one person from the public safety sector; (2) one person from the public health sector; (3) one person currently residing in a rural area; (4) one person actively engaged in the marijuana industry; and (5) one person who is either from the general public or actively engaged in the marijuana industry. AS 17.38.080(b)(1)-(5). However, the initial Board must contain two representatives with experience in the marijuana industry. See SCS CSHB 123(FIN) Sec. 10. Gov. Walker appointed the initial five MCB members on July 1, 2015 (<http://www.gov.state.ak.us/Walker/press-room/full-press-release.html?pr=7224>).

¹¹⁰ AS 17.38.090.

- Qualifications for registration that are directly and demonstrably related to the operation of a marijuana establishment;
- Security requirements for marijuana establishments, including for the transportation of marijuana by marijuana establishments;
- Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of 21;
- Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;
- Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;
- Reasonable restrictions on the advertising and display of marijuana and marijuana products; and
- Civil penalties for the failure to comply with applicable regulations.

Additionally, several procedures for the application process for registration and licensing are included in the statute:

- Each application for a registration to operate a marijuana establishment must be submitted to the MCB.¹¹¹
- Each renewal application for a registration to operate a marijuana establishment must be submitted to the MCB, and may be submitted up to 90 days prior to the expiration of the current registration.¹¹²
- Upon receipt of an application or renewal application, the MCB will forward a copy of the registration and half of the registration fee to the local regulatory authority where the applicant desires to operate the marijuana establishment (unless the local government has not established such a regulatory authority).¹¹³

¹¹¹ AS 17.38.100(a).

¹¹² AS 17.38.100(a).

¹¹³ AS 17.38.100(c).

- The MCB shall issue an annual registration to an applicant within 45-90 days of receipt of an
- application or a renewal application.¹¹⁴ Applications may be denied if the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.090, or if the board is notified by the relevant local government that the applicant is not in compliance with applicable local marijuana ordinances and regulations.¹¹⁵

These lists may be expanded, as the MCB maintains broad power over the cultivation, manufacture, and sale of marijuana in the state.¹¹⁶ The MCB also has identified goals which will likely guide and influence its rulemaking:

- Keep marijuana away from underage persons;
- Protect public health and safety;
- Respect privacy and constitutional rights;
- Prevent diversion of marijuana, and
- Degrade illegal markets for marijuana.¹¹⁷

And, though its role in the regulatory process is limited, the legislature can influence and direct regulators through implementing legislation, with the following limitations: (1) the legislature cannot repeal an initiative within two years of the effective date;¹¹⁸ (2) legislation “tantamount to repeal” is similarly prohibited;¹¹⁹ and the Act prohibits rules that make the operation of retail marijuana establishments “unreasonably impracticable.”¹²⁰

¹¹⁴ AS 17.38.100(c).

¹¹⁵ AS 17.38.100(c).

¹¹⁶ AS 17.38.084(a).

¹¹⁷ These goals were identified by the ABC Board before the MCB was created. Preliminary Considerations for Implementation of AS 17.38 (prepared for the Alcoholic Beverage Control Board and Public, Feb. 12, 2015) (http://commerce.state.ak.us/dnn/Portals/9/pub/Preliminary_Considerations_for_ImplementationofAS%2017.38.pdf).

¹¹⁸ Alaska Const. art. XI, § 6.

¹¹⁹ *Warren v. Thomas*, 568 P.2d 400 (1977).

¹²⁰ AS 17.38.090(a). This term is defined in the Act as “Measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.” AS 17.38.900(14).

In short, Ballot Measure 2 did not contemplate a significant direct role for the legislature in crafting the regulatory framework or enforcing the state’s retail marijuana laws. Rather, most of the power resides in the MCB and local governments.

Summary of Alaska Marijuana Industry Regulations

Ballot Measure 2, codified in AS 17.38, established the broad framework for regulating marijuana in Alaska. The task of crafting the specific implementing rules was charged to the ABC Board, or an MCB, if the Legislature created one. Legislation creating the MCB passed on the last day of the 2015 legislative session, five members were later appointed to the Board, and the MCB met for the first time on July 2, 2015. The Legislature took no other formal action with respect to state marijuana laws during that session, though several marijuana-related bills were introduced.

Pursuant to this statutory requirement, the MCB drafted a set of regulations to govern the marijuana industry in Alaska.¹²¹ The regulations are comprehensive, covering all aspects of the industry, including cultivating marijuana plants, converting cultivated marijuana into marijuana products (such as edibles and concentrates), safety and quality testing for marijuana and marijuana products, and retail sale. The regulations include extensive requirements for business, including dictating how and when retail stores may operate and advertise, and mandate special training requirements for all marijuana establishment employees.

The regulations also assert control over marijuana production, requiring stringent adherence to potency limits, quality standards, safety protocols, inventory tracking, and product packaging and labeling requirements. The regulations provide the MCB with broad investigation and enforcement powers, allowing it to inspect premises and business records as it sees fit.

In short, the marijuana industry in Alaska is heavily regulated. The regulations are spread across nine articles:

1. Licensing, Fees (3 AAC 306.005 - 3 AAC 306.100)
2. Local Options (3 AAC 306.200 - 3 AAC 306.260)
3. Retail Marijuana Stores (3 AAC 306.300 - 3 AAC 306.360)
4. Marijuana Cultivation Facilities (3 AAC 306.400 - 3 AAC 306.480)
5. Marijuana Product Manufacturing Facilities (3 AAC 306.500 - 3 AAC 306.570)
6. Marijuana Testing Facilities (3 AAC 306.600 - 3 AAC 306.675)
7. Operating Requirements for All Marijuana Establishments (3 AAC 306.700 - 3 AAC 306.755)
8. Enforcement, Civil Penalties (3 AAC 306.800 - 3 AAC 306.850)
9. General Provisions (3 AAC 306.905 - 3 AAC 306.990)

¹²¹ 3 AAC Chapter 306: Regulation of Marijuana Industry.

Amongst these articles are several regulations that are of concern to local governments, as municipalities may be involved in numerous aspects of the licensure process and will play an important role in implementing the regulations, enforcing requirements, and monitoring the industry. For example:

- Local governments may protest a license application.¹²²
- Local governments may suggest conditions for a new application or renewal (and will have responsibility for monitoring compliance with such adopted conditions).¹²³
- Local governments are expected to notify the Board if marijuana establishments violate any applicable statute or regulation.¹²⁴
- Marijuana establishments must comply with all applicable health and safety requirements and are subject to inspection by “the local fire department, building inspector, or code enforcement officer to confirm that no health or safety concerns are present.”¹²⁵
- Local governments may prohibit outdoor marijuana production.¹²⁶

Additionally, numerous other proposed regulations, including signage and security requirements, enforcement of age restrictions, security zoning compliance, and public health and safety concerns, appear as if they will require local oversight.

The local option regulations are also of significant concern to local governments. These regulations are modeled on the Alaska local option statutes for alcohol establishments. The local option regulations include rules prescribing types of local options, a change of a local option, the removal of a local option, the effect on licenses of a prohibition on sale, the prohibition of importation or purchase after a local option election, the effect on licenses of a restriction on sale, licensing after a prohibition on sale except on premises operated by a municipality, the procedure for local option elections, and notice of results of a local option election.

Other regulations of note include:

¹²² 3 AAC 306.010(c), .060(a).

¹²³ 3 AAC 306.060(b).

¹²⁴ 3 AAC 306.060(c).

¹²⁵ 3 AAC 306.735(a).

¹²⁶ 3 AAC 306.430(b).

- Who cannot obtain a license: those who have a previous felony conviction, those who have been found guilty of certain alcohol offenses, including selling alcohol to a minor, have a misdemeanor controlled substances conviction during the past five years, or a specific marijuana-related conviction within the last two years.¹²⁷
- Zoning restrictions: "The board will not issue a marijuana establishment license if the licensed premises will be located within 500 feet of a child-centered facility including a school, daycare, or other facility providing services to children; a building in which religious services are regularly conducted; or a correctional facility" or "if the licensed premises will be located in a liquor license premises."¹²⁸
- Licenses will only be issued to residents of the state, with certain conditions applying to ensure residency when the license is issued to a business entity.¹²⁹
- Application fee for new establishment license set at \$1,000. The renewal application fee is \$600.¹³⁰
- Annual license fees set at:
 - for a marijuana retailer license, \$5000;
 - for a limited marijuana cultivation facility license, \$1000;
 - for a marijuana cultivation facility license, \$5000;
 - for a marijuana extract only manufacturing facility license, \$1000;
 - for a marijuana product manufacturing facility license, \$5000;
 - for a marijuana testing facility license, \$1000.¹³¹
- Retail stores will have to comply with requirements for signage, hours of operations, restricting certain areas, and requirements for marijuana handler permits for employees.¹³²

¹²⁷ 3 AAC 306.010(d).

¹²⁸ AAC 306.010(a), (b).

¹²⁹ 3 AAC 306.015(b). A "resident of the state" is a person who meets the residency requirement for a permanent fund dividend during the calendar year in which that person applies for a marijuana establishment license. 3 AAC 306.015(e)(2).

¹³⁰ 3 AAC 306.100.

¹³¹ 3 AAC 306.100(d).

¹³² 3 AAC 306.310, .320, .325, .715.

- Marijuana sales transactions will be limited to the following:
 - one ounce of usable marijuana;
 - seven grams of marijuana-infused extract for inhalation, or
 - marijuana or marijuana products containing no more than 5600 mg of THC.¹³³
- Marijuana may only be sold to a consumer who is physically present on the licensed premises; sales over the internet are not permitted.¹³⁴

A more detailed summary of the regulations follows, with a focus on items of significance to local government.

Licensing and Fees

Article 1 provides further detail on the four different license types authorized by statute and required for operation of a marijuana establishment in the State of Alaska (retail marijuana store license, marijuana cultivation facility license, marijuana product manufacturing facility license, and marijuana testing facility license).¹³⁵ This section outlines the process for applying for a new license, renewing a license, or transferring a license;¹³⁶ establishes the fees applicable for each type of license;¹³⁷ describes the role of the public and local governments in the application process;¹³⁸ and establishes a process for license seekers to challenge or appeal adverse decisions.¹³⁹

Numerous restrictions are placed on the MCB's ability to issue a marijuana establishment license. For example, the MCB will not issue a license if: the licensed premises would be located within 500 feet of school grounds, a recreation or youth center, a building used for religious services, or a correctional facility;¹⁴⁰ the licensed premises would be located in a liquor license premises;¹⁴¹ when the location of the

¹³³ 3 AAC 306.355.

¹³⁴ 3 AAC 306.710(a)(5).

¹³⁵ 3 AAC 306.005.

¹³⁶ 3 AAC 306.020.

¹³⁷ 3 AAC 306.100.

¹³⁸ 3 AAC 306.060, .065, .070.

¹³⁹ 3 AAC 306.075, .080, .085, .090, .095.

¹⁴⁰ 3 AAC 306.010(a).

¹⁴¹ 3 AAC 306.010(b).

licensed premises would conflict with a local zoning ordinance;¹⁴² or when the person seeking the license has a certain criminal history.¹⁴³

Marijuana establishment licenses will only be issued to a specific individual, to a partnership, a limited liability company, a corporation or a local government.¹⁴⁴ No one other than a licensee may have a financial interest in the business for which a license is issued.¹⁴⁵ Individuals or sole proprietors seeking a license must be residents of the State of Alaska,¹⁴⁶ meeting the residency requirement standard applicable for a permanent fund dividend.¹⁴⁷ For a partnership, each partner must be a resident of the state.¹⁴⁸ A limited liability company must be qualified to do business in the state and each member of the company must be a resident.¹⁴⁹ For a corporation, the corporation must be qualified to do business in the state or incorporated in Alaska.¹⁵⁰ Applications require extensive information, including a detailed operating plan (including plans for security, inventory tracking, employee qualifications, waste disposal, transportation and delivery of products, signage and advertising) and a criminal history background check.¹⁵¹ There is public notice of each application.¹⁵²

Local governments have the opportunity to protest any marijuana establishment license application (application for a new marijuana establishment license, renewal of a license, or transfer of a license to another person).¹⁵³ Protests must be filed no later

¹⁴² 3 AAC 306.010(c).

¹⁴³ 3 AAC 306.010(d).

¹⁴⁴ 3 AAC 306.015(a).

¹⁴⁵ 3 AAC 306.015(a).

¹⁴⁶ 3 AAC 306.015(b)(1).

¹⁴⁷ 3 AAC 306.015(e)(2).

¹⁴⁸ 3 AAC 306.015(b)(2).

¹⁴⁹ 3 AAC 306.015(b)(3).

¹⁵⁰ 3 AAC 306.015(b)(4).

¹⁵¹ 3 AAC 306.055.

¹⁵² 3 AAC 306.025.

¹⁵³ 3 AAC 306.060.

than 60 days after the application notice is posted.¹⁵⁴ A protest is filed by sending the MCB director and applicant a written explanation of the reasons for the protest.¹⁵⁵ If a protest is filed, the MCB will deny the application unless it determines that the protest was arbitrary, capricious, or unreasonable.¹⁵⁶ A local government may also recommend a condition placed upon a marijuana establishment license. Similarly, the condition will be imposed unless it is found to be arbitrary, capricious, or unreasonable.¹⁵⁷ If the board imposes a condition recommended by a local government, the local government may be responsible for monitoring compliance with the condition.

Local Option

Article 2 details the local option rules, whereby a local government may prohibit the sale or importation for sale of marijuana and any marijuana product, and the operation of any marijuana establishment, within its borders.¹⁵⁸ Such a local option may be effectuated by a public majority vote on the question to approve the option, or a local government's assembly or city council may pass an ordinance to the same effect.¹⁵⁹ A ballot question to adopt a local option must follow certain procedures and contain specific language.¹⁶⁰ The regulations also provide instructions for changing or removing a local option, and the impact of an adopted local option on existing licenses.¹⁶¹ The results of local option elections must be publicly noticed.¹⁶²

If a local option to prohibit the sale of marijuana or any marijuana product is enacted, a person may not knowingly bring,¹⁶³ send,¹⁶⁴ or transport¹⁶⁵ marijuana or marijuana

¹⁵⁴ 3 AAC 306.060(a).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ 3 AAC 306.015(b).

¹⁵⁸ 3 AAC 306.200(a)(1)-(2).

¹⁵⁹ 3 AAC 306.200(a).

¹⁶⁰ 3 AAC 306.200(b), .230.

¹⁶¹ 3 AAC 306.210, .220, .230, .250.

¹⁶² 3 AAC 306.260.

¹⁶³ "Bring" means to carry or convey or to attempt or solicit to carry or convey. 3 AAC 306.240(d)(1).

products for sale into the area within the boundary of that local government, nor may any person who resides within the boundary of that local government purchase marijuana or marijuana products from another person in violation of the local option¹⁶⁶. However, a licensed marijuana establishment may transport marijuana through the boundaries of a jurisdiction that has banned the purchase and sale of marijuana, provided certain conditions are met.¹⁶⁷

Marijuana Establishments

Articles 3-7 establish rules for all types of marijuana establishments in the State of Alaska, including retail marijuana stores (Article 3), marijuana cultivation facilities (Article 4), marijuana product manufacturing facilities (Article 5), and marijuana testing facilities (Article 6). The regulations also include a section on operating requirements applicable to all marijuana establishments and license types (Article 7).

Operating Requirements for All Marijuana Establishments

All marijuana establishment licensees, employees, or agents, who sell, cultivate, manufacture, test or transport marijuana or marijuana products, or who check the identification of customers or visitors, must obtain a marijuana handler permit before receiving a license or beginning such employment.¹⁶⁸ To obtain a marijuana handler permit, a person must complete an education course and pass a written test administered by the MCB.¹⁶⁹ All marijuana establishments must restrict access to the public and employ certain security and surveillance measures.¹⁷⁰ Marijuana establishments must carefully track their inventory, maintain records, and may only

¹⁶⁴ “Send” means to cause to be taken or distributed or to attempt or solicit or cause to be taken or distributed, and includes use of the United States Postal Service. 3 AAC 306.240(d)(2).

¹⁶⁵ “Transport” means to ship by any method, and includes delivering or transferring or attempting or soliciting to deliver or transfer marijuana or marijuana products to be shipped to, delivered to, or left or held for pickup by any person. 3 AAC 306.240(d)(3).

¹⁶⁶ 3 AAC 306.240(a), (b).

¹⁶⁷ 3 AAC 306.240(c).

¹⁶⁸ 3 AAC 306.700(a).

¹⁶⁹ 3 AAC 306.700(b).

¹⁷⁰ 3 AAC 306.710, .715, .720.

transport marijuana and marijuana products, or dispose of marijuana waste, according to certain guidelines.¹⁷¹

Importantly for local governments, local fire departments, building inspectors, and code enforcement officers are authorized to inspect marijuana establishments to ensure that no health or safety concerns are present.¹⁷²

Retail Marijuana Stores

Licensed retail marijuana stores may sell marijuana and marijuana products purchased from licensed marijuana cultivation facilities and product manufacturing facilities for consumption off the licensed premises.¹⁷³ In limited circumstances, marijuana and marijuana products may be consumed in designated areas on the licensed retail premises.¹⁷⁴ Prior approval from the MCB will be necessary for such a “marijuana cafe”¹⁷⁵ to operate, and local anti-smoking ordinances which apply in public places would remain in effect. Alaska will be the first state to allow such limited public marijuana consumption.

There are numerous other restrictions on retail marijuana store operations. For instance, marijuana may not be sold to anyone under 21 years of age, or to anyone under the influence of alcohol or any other controlled substance.¹⁷⁶ Any marijuana or marijuana product sold must be properly labeled and packaged.¹⁷⁷ Marijuana may not be sold in a quantity exceeding the following in a single transaction: one ounce of usable marijuana, seven grams of marijuana concentrate, or marijuana products containing more than 5,600 mg of THC.¹⁷⁸ Retail marijuana stores must be closed to consumers between 5:00 a.m. and 8:00 a.m. each day. Marijuana may only be sold to a consumer who is physically present on the licensed premises; sales over the internet are not

¹⁷¹ 3 AAC 306.730, .740, .750, .755.

¹⁷² 3 AAC 306.735.

¹⁷³ 3 AAC 306.305(a)(1)-(2).

¹⁷⁴ 3 AAC 306.305(a)(4).

¹⁷⁵ <http://www.npr.org/2015/12/24/460843950/alaskas-pot-cafes-will-give-patrons-a-taste-of-cannabis>

¹⁷⁶ 3 AAC 306.310(a)(1)-(2).

¹⁷⁷ 3 AAC 306.310(a)(3), .345.

¹⁷⁸ 3 AAC 306.355.

permitted.¹⁷⁹ Additionally, no marijuana or marijuana products may be sold until all required laboratory testing of such products is completed.¹⁸⁰

There are also restrictions on marketing and advertising of marijuana and marijuana products for sale. A retail marijuana store may not offer or deliver samples, or free marijuana or marijuana products, to a consumer as a marketing promotion or for any other purpose,¹⁸¹ and there are limits on coupons and other promotional activities.¹⁸² A retail marijuana store may have no more than three signs that identify the store visible to the public, signs must be in a window or attached to the outside of the store, and may not exceed 4,800 square inches.¹⁸³

Advertisements may not represent therapeutic effects of marijuana, nor may they appeal to children.¹⁸⁴ Advertisements must contain health warnings.¹⁸⁵ There are also restrictions on the permissible location of marijuana advertising. Such advertising may not be placed within 1,000 feet of a child-centered facility (such as a school, childcare facility, recreation center, park, or library); on or in public transit vehicles or public transit shelters; on or in publicly owned property; within 1,000 feet of a substance abuse facility; or on a college campus.¹⁸⁶

Marijuana Cultivation Facilities

Except as provided in the personal use marijuana rules contained in AS 17.38.020, or under the *Ravin Doctrine* or Alaska’s medical marijuana law, a person may not “plant, propagate, cultivate, harvest, trim, dry, cure, package, or label marijuana grown at a place under that person’s control, or sell marijuana grown at a place under that person’s control to any marijuana establishment unless the person has obtained a marijuana cultivation facility license . . . or is an employee or agent acting for a licensed marijuana cultivation facility.”¹⁸⁷ Marijuana cultivation licenses come in two sizes: “standard,” with

¹⁷⁹ 3 AAC 306.710(a)(5).

¹⁸⁰ 3 AAC 306.340.

¹⁸¹ 3 AAC 306.310(b)(3)(A)-(B).

¹⁸² 3 AAC 306.360(d).

¹⁸³ 3 AAC 306.360(a).

¹⁸⁴ 3 AAC 306.360(b).

¹⁸⁵ 3 AAC 306.360(e).

¹⁸⁶ 3 AAC 306.360(c).

¹⁸⁷ 3 AAC 306.400(a).

no listed size restrictions, or “limited,” which may have no more than 500 square feet of space under cultivation.¹⁸⁸ With such limited licenses available, individuals may be able to grow commercial marijuana in their homes, depending on local zoning ordinances. All marijuana cultivation facility employees or agents are required to have a marijuana handler permit.¹⁸⁹

Premises licensed for marijuana cultivation are generally limited to the cultivation of marijuana plants, which will yield bud and flower for sale. However, such facilities may produce marijuana concentrates and extracts if the facility also has a marijuana product manufacturing license and such activity occurs in a secure area separate from any cultivation area.¹⁹⁰ A marijuana cultivation facility may not sell any marijuana until all required laboratory testing is complete on each harvest batch.¹⁹¹ Marijuana cultivation facilities must package and label the marijuana they sell according to specific guidelines.¹⁹²

¹⁸⁸ 3 AAC 306.400(a)(1)-(2); 3 AAC 306.405; 3 AAC 306.410.

¹⁸⁹ 3 AAC 306.425.

¹⁹⁰ 3 AAC 306.450.

¹⁹¹ 3 AAC 306.455.

¹⁹² 3 AAC 306.470, .475.



*Marijuana Greenhouse*¹⁹³

Marijuana cultivation facilities may be wholly indoors, in a fully enclosed secure greenhouse with rigid walls, a roof and doors, or production of marijuana may occur outdoors, so long as the outdoor facility is enclosed by a physical barrier and public view is obscured by a wall or fence at least six feet high.¹⁹⁴ Whether the cultivation and production of marijuana occurs indoors or outdoors, marijuana cultivation facilities must ensure that any marijuana at the facility cannot be observed by the public from outside the facility and does not emit an odor detectable to the public outside the facility, except as allowed by a local conditional use permit.¹⁹⁵ Local governments may prohibit outdoor production.¹⁹⁶

¹⁹³ Photo source: <https://pixabay.com/en/marijuana-colorado-marijuana-grow-269851/>

¹⁹⁴ 3 AAC 306.430.

¹⁹⁵ 3 AAC 306.430(c)(1)-(2).

¹⁹⁶ 3 AAC 306.430(b).

Marijuana Product Manufacturing Facilities

A licensed marijuana product manufacturing facility may purchase marijuana from a cultivation facility or another product manufacturing facility; extract marijuana concentrate;¹⁹⁷ manufacture, refine, process, cook, package, label, and store marijuana concentrates or any marijuana product for topical use on the body (such as ointments, salves, patches, or tinctures) and any product intended for consumption (such as edibles).¹⁹⁸ Marijuana product manufacturing facilities may sell marijuana products to licensed retail marijuana stores or other licensed product manufacturing facilities. They may also transport marijuana and provide limited samples of their products in furtherance of their licensed activities.¹⁹⁹

Marijuana product manufacturing facilities may not: sell marijuana or marijuana products directly to a consumer; sell any products that are not manufactured, packaged, and labeled in compliance with state regulations; or allow any person to consume marijuana on the licensed premises.²⁰⁰ There are also limits on the types of products that may be produced: marijuana product manufacturing facilities may not sell “adulterated” edible marijuana products; any product that “closely resembles” a familiar food or drink item; or any product that “would appeal to children.”²⁰¹ All products must adhere to strict potency guidelines. A single serving of a marijuana product may not exceed five mg active THC and a single packaged unit of marijuana product to be eaten or swallowed may not exceed ten servings, or 50 mg active THC.²⁰² The THC must be homogenous, or evenly distributed throughout the product.²⁰³ Products must be packaged and labeled as required by the regulations.²⁰⁴

¹⁹⁷ See 3 AAC 306.555 for more details.

¹⁹⁸ 3 AAC 306.505(3).

¹⁹⁹ 3 AAC 306.505.

²⁰⁰ 3 AAC 306.510.

²⁰¹ 3 AAC 306.510(a)(4); 3 AAC 306.510(b).

²⁰² 3 AAC 306.560.

²⁰³ *Id.*

²⁰⁴ 3 AAC 306.565, .570.



*KEIF*²⁰⁵

Additionally, MCB approval is necessary for each product a marijuana product manufacturing facility seeks to manufacture for sale.²⁰⁶ Approval for new products, subsequent to the initial license application, will require separate application and fee payment.²⁰⁷ Additionally, no marijuana products may be sold to retailers until all required laboratory testing is complete.²⁰⁸

A more limited license is available that allows only for the production of marijuana concentrate on the licensed premises.²⁰⁹ Such facilities may not convert marijuana concentrate into any other product. There are specific guidelines applicable to the

²⁰⁵ Licensed under Public Domain via Wikimedia Commons (<https://upload.wikimedia.org/wikipedia/commons/a/ag/Keif.jpg>).

²⁰⁶ 3 AAC 306.525.

²⁰⁷ 3 AAC 306.525(c).

²⁰⁸ 3 AAC 306.550.

²⁰⁹ 3 AAC 306.515.

production of marijuana concentrate which apply to both standard production facilities and limited concentrate-only facilities.²¹⁰



*HASHISH*²¹¹

In addition to obtaining a license, ensuring that all employees have marijuana handler certification, and complying with the regulations that apply to all other marijuana establishments, marijuana product manufacturing facility employees who handle

²¹⁰ 3 AAC 306.555.

²¹¹ "American medical hashish(10)" by Mjpresson - Own work. Licensed under CC BY-SA 3.0 via Wikimedia Commons ([https://commons.wikimedia.org/wiki/File:American_medical_hashish\(10\).jpg#/media/File:American_medical_hashish\(10\).jpg](https://commons.wikimedia.org/wiki/File:American_medical_hashish(10).jpg#/media/File:American_medical_hashish(10).jpg)).

marijuana at the facility must obtain a state food safety worker card.²¹² Marijuana product manufacturing facilities must comply with the Alaska Food Safety Code, local kitchen-related health and safety standards for food establishments, and are subject to inspection by local safety officials, including fire departments, building inspectors, and code enforcement officers.²¹³

Marijuana Testing Facilities

Marijuana testing facilities play an important role in Alaska’s marijuana regulatory framework. As discussed in previous sections, no marijuana or marijuana products can be sold to retailers or the public until all required testing is completed. Required tests may include potency analysis, moisture content, foreign matter inspection, microbial screening, pesticide, other chemical residue, and metals screening, and residual solvents levels.²¹⁴

To ensure objectivity, no licensee of any marijuana testing facility, nor any agent or employee of a testing facility may have an ownership interest in, or any other direct or indirect financial interest in any other licensed marijuana establishment.²¹⁵

Enforcement and Civil Penalties

Representatives of the MCB, including the director, enforcement agents, or other employees, have broad inspection authority over marijuana establishments to ensure compliance with all applicable laws and regulations.²¹⁶ They may enter any marijuana establishment and inspect the licensed premises and access business records, computer files, and the marijuana inventory tracking system.²¹⁷ This power extends to local governments as “peace officers,” defined to include a member of the police force of a municipality, a village public safety officer, a regional public safety officer, and any officer whose duty is to enforce and preserve the public peace, may also inspect licensed marijuana establishment premises and business records at any reasonable time.²¹⁸

²¹² 3 AAC 306.530(b).

²¹³ 3 AAC 306.545.

²¹⁴ 3 AAC 306.645(a).

²¹⁵ 3 AAC 306.605(d).

²¹⁶ 3 AAC 306.800.

²¹⁷ 3 AAC 306.800.

²¹⁸ 3 AAC 306.800; 3 AAC 306.990(31).

Following an inspection, an inspection report, advisory report, or notice of violation may be issued.²¹⁹ Such action may lead to suspension or revocation of a marijuana establishment license.²²⁰ In cases where a marijuana establishment poses an immediate threat to the public health, safety, or welfare, a summary suspension of the license, requiring an immediate stop to the offending activity, may be ordered.²²¹ In addition, the MCB may impose civil fines ranging from \$10,000 to \$50,000 depending on the number of violations, or up to three times the amount of the monetary gain that resulted from the violation.

²¹⁹ 3 AAC 306.805.

²²⁰ 3 AAC 306.805, .810, .815, .820.

²²¹ 3 AAC 306.825.

PART SIX: CIVIL AND CRIMINAL PENALTIES FOR MARIJUANA CULTIVATION, POSSESSION, AND SALE

Limited marijuana production, use, possession, and sale is permitted in certain circumstances. When these activities fall outside of those narrow conditions, criminal penalties still apply. The applicable penalties depend on a combination of factors, including the purpose of the use/possession, the intent of the user/possessor, the location of the use/possession, the age of the user/possessor, and the amount of marijuana involved.

The Alaska Statutes classify the most common marijuana crimes and penalties across a spectrum, from violations (punishable by a civil fine) to felonies. Other than exempting certain conduct from criminal penalties, there were no formal criminal punishment provisions contained in Ballot Measure 2. Thus, for example, an unregistered marijuana cultivation facility or testing center operating without a license could be charged under the existing criminal statutes prohibiting marijuana possession as well as penalized for violating the civil licensure provisions.

During the last legislative session, the Alaska Legislature considered several bills aimed at updating Alaska's statutes to reflect recent changes in state marijuana laws.²²² However, the only marijuana-related bill to pass was the one establishing the MCB; no changes to Alaska's criminal statutes were made.

Marijuana Violations

- A violation is a noncriminal offense punishable only by a fine.²²³
- Public consumption of marijuana is classified as a violation punishable by a fine up to \$100.²²⁴
- A marijuana home grow that does not comply with the statutory requirements (i.e., the grower is under 21; there are more than six plants; more than three mature, flowering plants; the grow is not secure; or is visible to the public) is a violation punishable by a fine up to \$750.²²⁵

²²² See, e.g., SB30, HB75.

²²³ AS 11.81.900(63).

²²⁴ AS 17.38.040.

²²⁵ AS 17.38.030(b).

Marijuana Misdemeanors

- Misconduct Involving a Controlled Substance in the Sixth Degree (MICS-6). This crime includes:
 - Use or display of any amount of marijuana.²²⁶
 - Possession of less than one ounce of marijuana.²²⁷
 - Penalty: Class B Misdemeanor; punishable by up to 90 days in prison and a \$2,000 fine.²²⁸
- Misconduct Involving a Controlled Substance in the Fifth Degree (MICS-5). This crime includes:
 - Manufacture or delivery,²²⁹ or possession with intent to manufacture or deliver, less than one ounce of marijuana.²³⁰
 - Possession of one ounce or more of marijuana²³¹
 - Penalty: Class A Misdemeanor, is punishable by up to one year in prison and a \$10,000 fine.²³²

Marijuana Felonies

- Misconduct Involving a Controlled Substance in the Fourth Degree (MICS-4). This crime includes:
 - Manufacture, delivery, or possession with intent to manufacture or deliver, one ounce or more of marijuana.²³³

²²⁶ AS 11.71.060(a)(1); AS 17.38.020(A) renders this section inapplicable to persons over 21 who are in possession of one ounce or less of marijuana.

²²⁷ AS 11.71.060(a)(2); AS 17.38.020(A) renders this section inapplicable to persons over 21 who are in possession of one ounce or less of marijuana.

²²⁸ AS 11.71.060(b), AS 12.55.135(b), AS 12.55.035(b)(6).

²²⁹ "deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship. AS 11.71.900(6).

²³⁰ AS 11.71.050(a)(1). Under AS 17.38, this would be applicable to amounts greater than one ounce. AS 17.38 also allows adults over 21 to transfer up to one ounce of marijuana to another person without remuneration.

²³¹ AS 11.71.050(a)(2)(E). Under AS 17.38, this would be applicable to amounts greater than one ounce.

²³² AS 12.55.135(a); AS 12.55.035(b)(5); AS 11.71.050(b)

- Possession of four ounces or more of marijuana.²³⁴
- Possession of any amount of marijuana with reckless disregard that the possession occurs on or within 500 feet of school grounds; or at or within 500 feet of a recreation or youth center; or on a school bus.²³⁵
- Possession of 25 or more marijuana plants.²³⁶
 - Penalty: Class C Felony, punishable by a prison sentence of up to five years and a \$50,000 fine.²³⁷
- Misconduct Involving a Controlled Substance in the Third Degree (MICS-3). This crime includes:
 - Delivery of any amount of marijuana to a person under 19 years of age who is at least three years younger than the person delivering it.²³⁸
 - Penalty: Class B Felony, punishable by a prison sentence of up to ten years and a \$100,000 fine.²³⁹

Driving Under the Influence of Marijuana

Alaska law prohibits driving under the influence of a controlled substance. Marijuana is a Schedule VIA controlled substance, so it is illegal to operate a motor vehicle under the influence of marijuana (or a combination of marijuana, any other controlled substance, inhalant, or alcoholic beverage).²⁴⁰ Driving while under the influence (DUI) is a Class A misdemeanor, with increasing minimum penalties depending on the number of prior convictions,²⁴¹ or it can be a Class C Felony depending on the number and recentness of prior convictions.²⁴²

²³³ AS 11.71.040(a)(2). Under AS 17.38, this would be applicable to amounts greater than one ounce.

²³⁴ AS 11.71.040(a)(3)(F).

²³⁵ AS 11.71.040(a)(4)(A)(i)-(ii), AS 11.71.040(a)(4)(B).

²³⁶ AS 11.71.040(a)(3)(G), (d).

²³⁷ AS 11.71.040, AS 12.55.125(e), AS 12.55.035(b)(4).

²³⁸ AS 11.71.030(a)(2).

²³⁹ AS 11.71.030(C), AS 12.55.125(d), AS 12.55.035(b)(3).

²⁴⁰ AS 25.35.030(a)(1).

²⁴¹ AS 25.35.030(b)

²⁴² AS 25.35.030(n).

Determining if the operator of a motor vehicle is under the influence of marijuana is not as straightforward as determining if a driver is under the influence of alcohol. First, there is no breathalyzer or other “quick” scientific test for marijuana. Second, residual THC (the psychoactive ingredient in marijuana) can remain in the human body for extended periods of time. Thus, testing for “active” THC is necessary to determine if an individual is currently operating a vehicle under the influence of marijuana.²⁴³ Testing for active THC requires a blood test, which cannot be administered in the field, may require a warrant, and is far more invasive, expensive, and time consuming than an oral breathalyzer test for alcohol. Given these constraints, determination of whether a driver is operating a vehicle under the influence of marijuana in Alaska is generally made through the observations of an investigating officer trained in drug recognition.²⁴⁴

THC levels alone may still not provide an accurate determination if a person is driving while impaired. If a blood test is performed, there is significant debate over what amount of active THC in the bloodstream constitutes impairment or even indicates that a person is “high.”²⁴⁵ People metabolize THC at different rates and the degree of impairment can vary greatly. Alaska does not currently have a set limit on blood marijuana content to determine when a driver is impaired because of marijuana.²⁴⁶ The state takes a zero tolerance approach, criminalizing driving with any amount of controlled substances (including THC) in the bloodstream.²⁴⁷

Laws, policies, and technologies regarding testing for marijuana intoxication continue to evolve, but it is unclear how this issue will develop in Alaska. Ballot Measure 2 did not amend Alaska’s driving under the influence statute, nor has the Alaska Legislature taken any subsequent action to address marijuana use and driving. Relying on an officer’s drug recognition expertise, maintaining a zero tolerance THC limit, or adopting a protocol with a specific baseline, all raise concerns and have limitations. However,

²⁴³ See <http://www.npr.org/2014/02/23/280310526/with-support-for-marijuana-concern-over-driving-high-grows>; <http://www.adn.com/article/20150408/how-do-alaska-police-test-marijuana-drivers-suspected-dui>

²⁴⁴ See Blake and Finlaw at 375-76; <http://www.adn.com/article/20150408/how-do-alaska-police-test-marijuana-drivers-suspected-dui>; <http://www.adn.com/article/20150506/highly-informed-followup-cannabis-dui-and-request-readers>

²⁴⁵ See Blake and Finlaw at 376. See <http://www.npr.org/2014/05/21/314279711/without-a-marijuana-breathalyzer-how-to-curb-stoned-driving>

²⁴⁶ AS 25.35.030(a)(2) specifies the blood alcohol content (BAC) of 0.08% or more constitutes driving under the influence of alcohol.

²⁴⁷ I.e., any amount of THC renders a driver per se impaired.

Colorado and Washington, two other states with legalized marijuana, have set the DUI limit for THC in the blood at five nanograms of active THC per milliliter of whole blood. Other jurisdictions, such as Los Angeles, are testing oral swab technology.²⁴⁸

At a minimum, it is important for local law enforcement to be adequately trained in drug impairment recognition.

²⁴⁸ <http://www.npr.org/2014/02/23/280310526/with-support-for-marijuana-concern-over-driving-high-grows>

PART SEVEN: LOCAL REGULATION

The federal government has not repealed its marijuana prohibition, but it has supported a grant of significant control over marijuana regulation to the states. Over twenty states have legalized some form of marijuana use and the number is likely to keep growing. As a result, states are left to determine the amount of power, if any, they should give to local governments to regulate marijuana.²⁴⁹

Regulation of the commercial marijuana industry in Alaska will involve a mix of state and local oversight. The statutes enacted by Ballot Measure 2 contemplate the creation of a strong regulatory framework established by a state agency with local governments tasked with implementing the regulations. In the event that the state agency, in this case the MCB, failed to adopt regulations pursuant to AS 17.38.090, or did not timely accept or process registration applications pursuant to AS 17.38.100, there was a mechanism for local governments to establish a local regulatory agency and fill that role.²⁵⁰

Otherwise, local governments may enact ordinances governing the time, place, manner, and number of marijuana establishment operations within its jurisdiction;²⁵¹ and may establish and enforce civil penalties for violation of such time, place, manner, and number ordinances.²⁵²

Local governments who have established local regulatory authorities will receive a copy of all registration or renewal applications and one-half of the application fee for all applicants seeking to open a marijuana establishment in their jurisdiction.²⁵³ Local governments are also expected to communicate with the MCB and notify the MCB if an applicant is not in compliance with any applicable local ordinances and regulations concerning marijuana establishments in effect at the time of application.²⁵⁴ Such notification must occur prior to the MCB's registration decision.

²⁴⁹ See Robert A. Mikos, *Marijuana Localism*, 65 *Cas. W. Res. L. Rev.* 719 (2015).

²⁵⁰ AS 17.38.110(c). Additional details regarding the procedures that must be followed by local governments and local regulatory authorities if the MCB does not timely adopt regulations or process applications can be found in AS 17.38.110(d)-(k).

²⁵¹ AS 17.38.110(b).

²⁵² AS 17.38.110(b).

²⁵³ AS 17.38.100(c).

²⁵⁴ AS 17.38.100(d).

Opt-Out Provisions

AS 17.38.110(a) provides the option for local government to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or by a voter initiative. Communities can therefore opt out of allowing the manufacture and sale of marijuana within their jurisdictions, but cannot ban marijuana entirely. AS 17.38.020 states that personal use, possession, cultivation, and transfer of marijuana remains lawful in all political subdivisions in the state, and local governments also remain bound by the Alaska Supreme Court's ruling in *Ravin v. State of Alaska* regarding individual constitutional privacy rights and marijuana use and possession.

Opt-out provisions are discussed in more detail in a previous section.

Local Civil and Criminal Penalties

Political subdivisions in Alaska have different levels of authority to maintain self-government depending on how they are organized among various classes of cities and boroughs. Alaska state criminal laws apply in political subdivisions, and local governments adopt and incorporate provisions of the Alaska Criminal Code, including the Alaska Controlled Substances Act, into their ordinances.²⁵⁵

Local ordinances pertaining to marijuana use, possession, cultivation and sale, as well as possession of marijuana accessories, must be interpreted and applied in a manner consistent with changes to state law legalizing certain types of marijuana activities.

The Homer City Code prohibits the sale or possession of "drug paraphernalia,"²⁵⁶ which has a comprehensive definition covering most items used in the cultivation and consumption of marijuana.²⁵⁷ Violation of these code sections is punished under the "general penalty" provision of the Homer City Code.²⁵⁸ However, the Code does contain an exception for "drug paraphernalia" that is "specifically authorized and permitted

²⁵⁵ See, e.g., Anch. Mun. Ord. 08.35.010(a): The Controlled Substances Act set forth in the Alaska Statutes 11.71 is hereby adopted by reference and incorporated in this code, pursuant to Charter section 10.04. Specific provisions for municipal enforcement are listed in this section. No person shall violate any provision of this section or any applicable law of the Controlled Substances Act as may be hereinafter amended by the State of Alaska, nor any rule or regulation adopted by any authorized agency of the State of Alaska pursuant to the Controlled Substances Act.

²⁵⁶ Homer City Code Sec. 6.12.020

²⁵⁷ Homer City Code Sec. 6.12.010

²⁵⁸ Homer City Code Sec. 6.12.030

under the provisions of AS Title 17 and by such rules and regulations as are adopted pursuant thereto.”²⁵⁹

²⁵⁹ Homer City Code Sec. 6.12.020

PART EIGHT: REVENUE-GENERATING ASPECTS OF REGULATION

Marijuana and Revenue-Generating Opportunities

Many communities have used the marijuana industry to generate revenue. Typically, revenue generation is by both license fees and taxation. However, it is through excise and sales taxes that communities are seeing the largest financial impact.²⁶⁰

Alaska Statute 29.35.010(6) grants municipalities "general powers, subject to other provisions of law . . . to levy a tax or special assessment, and impose a lien for its enforcement." The Alaska Constitution requires that a "liberal construction shall be given to the powers of local government units."²⁶¹

Municipal Sales and Use Tax

Although the city Council has determined that it does not currently want to create a redundant taxation system with the Kenai Peninsula Borough (see Resolution 16-009), it is helpful to understand the City's options moving forward.

AS 29.45.650-710 authorizes the levy of sales and use taxes at the municipal level. The statutes give broad authority to municipalities to levy taxes on sales, rents and services provided within the municipality. Currently, the sales tax in Homer is 7.5% (4.5% City of Homer and 3% Kenai Peninsula Borough).²⁶²

It is unclear whether the Kenai Peninsula Borough ("Borough") will implement a sales tax on marijuana. If it does, AS 29.53.440 requires the City to levy a sales tax on every source already taxed by the Borough or none at all. Therefore, if the Borough decides to implement a sales tax on various aspects of the cultivation, distribution and sale of marijuana, the City will have to impose the same sales tax or none at all.

²⁶⁰ According to the Colorado Department of Revenue, Colorado counties have cumulatively generated \$3,849,973 in sales tax on retail marijuana sales during May 2015. Colorado's retail marijuana sales tax is 2.9%. Retail marijuana has an additional 10% sales tax, which represents 85% of the total 10% retail marijuana tax that is retained by the State. See <https://www.colorado.gov/pacific/sites/default/files/0515%20Marijuana%20Sales%20Tax%20by%20County%20Report.pdf>

²⁶¹ *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978).

²⁶² According to the Colorado Department of Revenue, Colorado counties have cumulatively generated \$3,849,973 in sales tax on retail marijuana sales during May 2015. Colorado's retail marijuana sales tax is 2.9%; Retail marijuana has an additional 10% sales tax, which represents 85% of total 10% retail marijuana tax that is retained by the State. See <https://www.colorado.gov/pacific/sites/default/files/0515%20Marijuana%20Sales%20Tax%20by%20County%20Report.pdf>

Conversely, the Borough could choose to exempt a marijuana sales tax if the City decides to implement the tax. In 2005, the sales tax laws changed to allow a borough to exempt any source from the borough sales tax if it is taxed by a city within the borough. However, if the Borough does not implement a sales tax, the City will incur the cost of collecting the sales tax. This could prove to be costly.

Excise Tax

An excise tax is a tax on the performance of an act. An excise tax resembles an import or manufacturing tax. Due to the nature of the excise tax, it is not subject to voter ratification.

Based on preliminary research, it appears that the City can establish an excise tax independent of the Borough. As stated above, AS 29.35.010(6) provides: "All municipalities have the following general powers, subject to other provisions of law . . . to levy a tax or special assessment, and impose a lien for its enforcement." The Alaska Supreme Court is reluctant to impose limitations on the taxing authority of municipalities where none are expressed. The fact that only property taxes and sales taxes are mentioned in AS 29.45 is not likely to be construed as a prohibition on taxes that are not mentioned. Therefore, it appears that the City can levy an excise tax independent of the Borough.

However, if the Borough forgoes an excise tax, the City will be tasked with collecting the tax. The cost of independently pursuing an excise task will need to be explored more thoroughly to determine whether the benefits outweigh the costs. The City may wish to approach the Borough about implementing an excise tax to offset this cost.

Additionally, the State will impose an excise tax on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. This should not preclude the City from imposing its own excise tax as there is no general prohibition against like municipal and state taxes.

License and Application Fees

Alaska Statute 17.38.100 mandates that individuals must register with the MCB to operate a marijuana establishment. The MCB began accepting registration applications on February 24, 2016.

Upon receiving an application, the MCB must immediately forward a copy of each application and half of the registration application fee to the local regulatory authority for the local government in which the applicant wishes to operate a marijuana establishment. The application fee for a new marijuana establishment license is

currently set at \$1,000.²⁶³ The application fee to renew a marijuana establishment license is currently set at \$600.²⁶⁴

The annual state license fees are currently set at:

- for a marijuana retailer license, \$5000;
- for a limited marijuana cultivation facility license, \$1000;
- for a marijuana cultivation facility license, \$5000;
- for a marijuana extract only manufacturing facility license, \$1000;
- for a marijuana product manufacturing facility license, \$5000;
- for a marijuana testing facility license, \$1000.²⁶⁵

The state fee for a marijuana handler permit card is currently \$50.²⁶⁶

License fees are not automatically shared with local governments, but the application fees will generate a steady stream of revenue on an annual basis for local municipalities.

Other Sources of Revenue

There are other potential revenue sources through the regulation of marijuana. The new law provides for the cultivation, testing, processing, packaging, transporting and sale of marijuana. The City will regulate many, if not all, of these aspects of marijuana becoming legalized. The City will likely be able to collect fees for building design and inspection, business registration issuance, suspension and/or revocation, as well as other various fees associated with starting and operating a business. These options will need to be explored more fully once the pending marijuana legislation is passed.

Municipalities will also want to consider embracing the fast growing marijuana tourism industry. In Colorado and Washington, small businesses are connecting travelers with marijuana shopping expeditions, visits to growers, lodging in marijuana-friendly hotels, and other opportunities to consume marijuana.²⁶⁷ Recreational marijuana became legal in Colorado and Washington in 2014. Hotels.com found that Denver hotel searches

²⁶³ 3 AAC 306.100(a).

²⁶⁴ 3 AAC 306.100(b).

²⁶⁵ 3 AAC 306.100(d)(1)-(6).

²⁶⁶ 3 AAC 306.100(e).

²⁶⁷ Julie Weed, *Boom Your 'Bud And Breakfast', Marijuana Tourism is Growing In Colorado and Washington*, <http://www.forbes.com/sites/julieweed/2015/03/17/book-your-bud-and-breakfast-marijuana-tourism-is-growing-in-colorado-and-washington/>

went up 73% compared to the year before, for the marijuana festival weekend of April 2014, the first to be held following legalization of marijuana sales.²⁶⁸ Other entrepreneurs are creating cannabis cooking classes, spa treatments and pot-smoking airport layovers.²⁶⁹ Municipalities should be prepared to work with small business owners given the success of the marijuana tourism industry.²⁷⁰

PART NINE: ZONING, LAND USE, AND THE ENVIRONMENT

While state entities may struggle with the scope of marijuana-related activities permitted under State of Alaska law, municipalities will remain responsible for regulating the location and operation of the marijuana dispensaries and grow facilities within their boundaries. Much like the introduction of any new industry in a municipality, municipal governments will need to develop deliberate and transparent processes for adopting and revising zoning laws, land use practices, and even comprehensive community planning to address the introduction of the marijuana industry.

Understanding Land Use Regulations Adopted by the State of Alaska

Although first and second class boroughs are obligated to provide for planning, platting, and land use regulation on an area wide basis, the MCB has proposed regulations that impose minimum zoning and land use regulations. Thus, these regulations must be taken into account when drafting municipal land use ordinances.

Primarily, the State regulations involve the implementation of buffer zones. Currently, 3 AAC 306.010 requires a 500-foot buffer zone between a licensed marijuana establishment and a child-centered facility (including schools, daycare, or any other facility providing services to children), a building in which religious services are regularly conducted, or a correctional facility. The regulations also prohibit the MCB from issuing a marijuana establishment license if the premises are located in a liquor license premises.

The regulation also prohibits the MCB from issuing a marijuana establishment license when a municipality protests the application under 3 AAC 306.060 on the grounds that the applicant's proposed licensed premises are located in a place within the municipality where a local zoning ordinance prohibits marijuana establishments, unless the municipality has approved a variance of the local ordinance.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Alaska as a destination for cannabis tourists depends on regulations, <http://www.alaskajournal.com/2015-10-21/alaska-destination-cannabis-tourists-depends-regs>

Consequently, municipalities should consider whether they wish to have additional minimum buffer distance requirements for the separation of certain uses from licensed marijuana producers, processors, or retailers. As discussed below, marijuana cultivation operations generate a great deal of odor that many people find offensive. While there are preventative measures that operators can take, an odor may still persist. Municipalities will need to take this into consideration when determining the location of these types of facilities as the odor may impact the surrounding businesses or create a nuisance for those living and working nearby.

Environmental Impacts of Marijuana Industry on Land Use Regulation

As is the case with any industry, all branches of the marijuana industry will have an impact on the community in which the industry operates. This resource guide attempts to provide introduction to each of the potential impacts, including, but not limited to, the social, legal, and environmental impacts, as each of these impacts should be considered when devising land use regulations. While the social and legal issues surrounding the industry have been discussed throughout this resource guide, environmental considerations may have the largest impact on local land use regulations, including, but not limited to, controlling odor emissions, ensuring proper ventilation, and responsible water and energy usage.

Odor Emissions and Commercial Grow Operations

Marijuana can emit a very strong odor that many people find offensive. The odor can migrate in and around a cultivation facility. Some marijuana strains can generate such a strong odor that its detectable by a commercial grow operation's surrounding neighborhoods.

Municipalities will need to consider modifying their building codes to require air filtration systems to greatly reduce the impact of the odor. Requiring filters, especially in cultivation rooms, can be an effective way to cut down citizen complaints about marijuana odor.

The City of Denver, Colorado issued guidelines for Best Management Practices for cultivation facilities to control the odor and promotes the use of Activated Carbon Filters, Negative Ion Generation technology, and Ozone Generators. These technologies filter, trap or breakdown the odor causing agents associated with growing and processing marijuana. Municipalities should require grow facilities to employ a similar type of filtration system to reduce the marijuana odor and citizen complaints.

Ventilation

Municipalities may also want to amend their building codes to require proper ventilation in indoor marijuana grow facilities. Indoor growers are experiencing serious issues with mold due to the amount of humidity that is created through the growing process. Mold, of course, poses serious health concerns for the people living and working in the facility. Mold can also compromise a building's structural integrity as it can cause rotting and decomposition of any wood used in the building's construction. Some grow operations, depending on their heating system and the type and amount of fuel they use, may require an air quality permit.

Waste Disposal

In addition to these primary environmental concerns, there are numerous other peripheral environmental considerations municipalities may need to consider. For example, many growers use chemicals during the marijuana cultivation process. This can contaminate the water supply if not treated and disposed of properly. This type of contamination can also cause issues for the wastewater treatment systems that are charged with filtering a city's drinking water. The result can be an increase in the costs of treatment or a possible impact on downstream ecologies.

Legalization states have already implemented licensing rules that require marijuana stems and organic waste from growing and processing operations to be rendered unusable by mixing them with 50 percent "other materials" and grinding them up before disposal or composting.

The current regulations contain a provision discussing waste storage, management, and removal. Specifically, 3 AAC 306.740 requires that litter, waste, and rubbish be properly removed. The regulation also requires that waste disposal equipment be maintained to avoid contaminating any area where marijuana or marijuana products are stored, displayed or sold, as well as to prevent odor and avoid attracting pests. Additionally, dangerous waste regulations will need to be followed if grow facilities and dispensaries generate hazardous waste.

Water and Light

Marijuana cultivation requires a great deal of water and light. According to a study published in 2012, a typical indoor marijuana grow room has the same power density- about 200 watts per square foot- as a data center. Pot growers use about a third of the electricity used by all the data centers in the U.S. In California, marijuana production accounts for about 3% of electricity used. This is because growing marijuana requires the use of heaters, carbon dioxide and ozone generators, carbon filters, dehumidifiers, fans, and high intensity lights.

Municipalities should consider energy efficiency rebates for growers who use efficient lighting systems. Another option is requiring marijuana growers to use renewable

energy for a portion of their operation. While this may increase the growers' costs, it will help take pressure off the electrical grid and the growers can recoup the cost through the rebate program.²⁷¹

²⁷¹ <http://www.adn.com/article/20151225/pot-growing-expands-power-demands-tax-us-grids>

PART TEN: PRESENT AND FUTURE REGULATORY CHALLENGES

There are numerous challenges associated with creating, implementing, and monitoring a regulatory framework for a marijuana industry, as well as documented risks which can be mitigated through a comprehensive legalization plan.

Some of the risks and challenges posed by marijuana legalization have been discussed elsewhere in this resource guide. Chiefly, federal marijuana prohibition still exists, leading to much uncertainty about the future of legalization and the possibility of criminal charges against those involved in the industry. Risk of diversion of legal marijuana back into the black market is a concern, especially as it relates to compliance with the guidelines set out in the Cole Memo. Federal prohibition also continues to affect the day-to-day business operations of licensed marijuana businesses, including lack of access to banking services, lines of credit, and high tax rates. Effective DUI enforcement remains a pressing public safety concern, as does the possibility of increased marijuana use by youth.

Included in this section are several examples of issues that have presented in the course of implementing marijuana legalization plans in other states, and should be of concern to Alaska policymakers and regulators. Before discussing those issues, it is important to note that it is too early to conclude whether the policy of legalizing marijuana in Colorado and Washington has been successful, nor is it clear how exactly to measure “success” in this context. However, numerous commentators have discussed the success of these states’ initial implementation of their marijuana legalization plans. Regarding Colorado in particular, the Brookings Institute notes:

“Colorado’s strong rollout is attributable to a number of elements. Those include: leadership by state officials; a cooperative, inclusive approach centering on task forces and working groups; substantial efforts to improve administrative communication; adaptive regulation that embraces regulatory look-back and process-oriented learning; reorganizing, rebuilding, and re-staffing critical state regulatory institutions; and changes in culture in state and local government, among interest groups, and among the public.”²⁷²

Implementing a marijuana legalization law involves “design, construction, and execution of institutions, rules, and processes related to a system of legalized marijuana.”²⁷³ According to the Center for Effective Public Management at Brookings,

²⁷² See Hudak, *Colorado’s Rollout of Legal Marijuana Is Succeeding: A Report on the State’s Implementation of Legalization*, at 2 (available at <http://www.brookings.edu/~media/research/files/papers/2014/07/colorado-marijuana-legalization-succeeding/cepmmjcov2.pdf>).

²⁷³ *Id.* at 4.

“Success occurs when those institutions, rules, and processes produce a system consistent with the goals of that policy.”²⁷⁴ This raises the biggest current challenge for Alaska: the regulations that will govern the state’s marijuana industry have not yet been finalized. Thus, it is unclear how many marijuana establishment licenses will be issued, where the establishments will be located, and what issues may arise. To meet this challenge, state and local lawmakers must look to the experiences in these other states and make an effort to emulate their best practices, while adapting them to the unique requirements of governing in Alaska. This will involve not just formal legal and regulatory actions, but also informal efforts such as strong leadership, public outreach and education, and coordinated community communication.

It is also important to note that data gleaned from the experiences in Colorado and Washington is limited—regulated sales of recreational marijuana have only been occurring in those states since 2014. Thus, this is a small sample size, but the information is instructive. Additionally, both Colorado and Washington (and now Oregon as well) had some previous experience with retail marijuana sales, as those states’ recreational marijuana industries followed years of permitting commercial sale of medical marijuana.

Home Grow Operations

Ballot Measure 2 and the *Ravin Doctrine* provide individuals with the ability to cultivate marijuana in their homes for non-commercial purposes (known as “home grows”). Restrictions on the size of home grows are provided in state statute, but monitoring home grows is difficult, as they will exist absent the registration and reporting requirements applicable to commercial marijuana establishments.

There are several risks inherent in home grow practices. First, there is risk that home growers will grow more marijuana than they are permitted to. This removes customers, revenue, and taxes from the retail market, and presents an opportunity to divert marijuana back to the black market, which risks federal intervention. Second, home grows present problems relating to product safety and quality assurance. Home grows also raise more localized concerns, including environmental hazards and increased crime.

A final, specific issue raised by home grows involves butane hash oil extraction. As explained in a previous section, this process involves using a solvent to extract THC- or CBD-rich oils from marijuana. The extract is then used for dabbing or vaping, or cooked

²⁷⁴ *Id.*

into edibles. Butane is a popular solvent used in home extraction processes, but it is highly flammable and has led to at least one reported explosion in Alaska.²⁷⁵

Edible Marijuana

Edible marijuana has proven to be a challenging aspect of legalization for state regulators. In Colorado, for example, regulators did not anticipate that such a high demand for edible marijuana products would exist. Colorado now estimates that edible marijuana products accounted for nearly 45% of the legal marijuana market in 2014 (this includes food, drinks, and pills).²⁷⁶



Challenges and concerns with regulating edible marijuana products exist on several fronts. First, it is difficult to identify and monitor public use of edibles because the products themselves may not offer any notice that they contain marijuana. Unlike burning marijuana to smoke it, dabbing, or vaping, once an edible marijuana product

²⁷⁵ See http://www.newsminer.com/news/local_news/hash-oil-cited-in-north-pole-explosion-that-damaged-home/article_88f8195e-8005-11e4-8979-73b90be67d4f.html

²⁷⁶ www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s_cid=mm6428a6_e

has been removed from its packaging, (or in the case of homemade edibles, where there is no packaging), it may appear indistinguishable from any other edible product. Second, serving sizes for edible marijuana may not be clear and intuitive. Because product dosing and standard serving sizes for marijuana edibles is much different than standard food, relying on individuals to appropriately self-regulate their intake may be problematic. One oft-mentioned example is the marijuana brownie that contains six servings. This requires users to divide the product into sixths, or bite off a small chunk to consume an appropriate amount. Additionally, the effects of edible marijuana may not be felt for 30-60 minutes after the product is ingested, as opposed to the immediate effects often felt after smoking marijuana.²⁷⁷ Thus, new users may over-consume in order to achieve the “high” feeling they are seeking. Further education and research is needed to address these issues, though research has been limited because of the federal prohibition on marijuana.

Overconsumption can lead to negative health consequences, including extreme fatigue, upset stomach, and potentially negative psychoactive effects. One case has identified marijuana intoxication from edibles as a contributing factor in a teenager’s death.²⁷⁸

Inconsistent potency is another issue with regulating edibles. Colorado has reported numerous examples of edible marijuana products containing significantly more or less THC than was indicated on package labeling. Such errors and inaccurate labeling can also lead to overconsumption, even though users may follow directions carefully.

Marijuana edibles have also taken numerous forms (such as candies, chocolates, brownies, and cereals) which appeal to children or may be accidentally ingested by children.

Colorado has begun to address these issues by appointing a dedicated state working group to this topic and passed legislation requiring the creation of rules to address specific concerns about edibles, such as establishing equivalency standards between marijuana flower and edible marijuana and expanding potency testing.

Defining Public vs. Private Use, Marijuana Cafes and Social Clubs

To date, marijuana legalization laws have not included opportunities to use marijuana outside of private settings. Regulations that do not permit marijuana to be consumed in public or where it is sold, and clean-air statutes and ordinances which ban tobacco and marijuana smoke, combine to limit the places where marijuana can be consumed. The

²⁷⁷ <http://www.thedailybeast.com/articles/2014/06/13/smoke-vs-snack-why-edible-marijuana-is-stronger-than-smoking.html>

²⁷⁸ www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s_cid=mm6428a6_e

same was true in Alaska. As the MCB drafted Alaska’s marijuana industry regulations, it was expected that marijuana use would remain permitted only in non-public areas. This raised issues for individuals who wished to use marijuana in social settings and for businesses who sought to accommodate those users. This matter recently came to a head, with the state issuing cease-and-desist letters to marijuana social clubs—“public locations run for the exclusive purpose of providing a controlled environment in which to consume marijuana and socialize with like-minded consumers.”²⁷⁹ At such establishments, people pay a membership fee to access a space where they can bring their own marijuana to smoke and share with others, and some clubs have additional free marijuana available.²⁸⁰ The state argued that these clubs violate the state law that prohibits consuming marijuana in public, which “includes a business to which the public or a substantial portion of the public has access.”²⁸¹ The state also likens the situation to alcohol “bottle clubs,” which are also prohibited by state statute.

Lack of places to consume marijuana is a concern for some residents of Alaska, but it could be especially difficult for tourists. Other than a private residence or a hotel (of which the number of rooms which allow smoking of any sort may be restricted, assuming there are marijuana-friendly hotels), the options for non-residents to consume marijuana are limited. If people who are visiting Alaska can legally purchase marijuana, they believe accommodations should be made so that there is a place for them to safely consume it.

Part of this debate has been resolved. Under the regulations, licensed retail marijuana establishments in Alaska can seek approval from the MCB to permit consumption of marijuana or a marijuana product purchased on the licensed premises in a designated area on the licensed premises.²⁸² In other words, this opens the door for marijuana retailers to establish “marijuana cafes,” where individuals can buy and consume marijuana. Alaska would be the first state to have such cafes.²⁸³

Several complications still exist on this front, even with the ability of the MCB to grant on-site consumption licenses. First, local governments may object to such licenses, which could impede the operation of marijuana cafes in certain jurisdictions. Second, some municipalities ban smoking in general, and marijuana smoking in particular, by

²⁷⁹ Mikos, *Marijuana Localism*, at 735.

²⁸⁰ <http://www.adn.com/article/20150702/state-takes-aim-marijuana-social-clubs>

²⁸¹ *Id.*

²⁸² 3 AAC 306.305(a)(4).

²⁸³ <http://www.npr.org/2015/12/24/460843950/alaskas-pot-cafes-will-give-patrons-a-taste-of-cannabis>

ordinance.²⁸⁴ In those jurisdictions, the form of marijuana that could be consumed on-site would be limited; additional guidance may be needed to distinguish between burning and smoking marijuana, vaping, and eating an edible product. Third, the current regulations do not contain a license type for stand-alone marijuana social clubs, which would not necessarily sell marijuana or have a retail license. Such clubs continue to occupy a wide “gray space” between private residences, where marijuana use is legal, and public facilities like restaurants and bars, where it is not.²⁸⁵ The legal question this may ultimately turn on is whether a public facility that charges a membership or initiation fee or monthly dues creates a space private enough to allow marijuana use on the premises. Finally, on-site consumption raises several policy and local governance questions, including zoning, public health, nuisance complaints, and increased risk of DUI.²⁸⁶

Employment and Drug Testing

Despite the legal status of marijuana under state law, public and private employees and employers must be aware of how marijuana use can affect their job status. This is particularly important in safety-focused industries like oil and gas, seafood processing, transportation and health care, where many workers have the potential to be drug tested. Additionally, as discussed in the DUI section of this resource guide, testing for marijuana use can reveal use that occurred previously, during non-work hours.

The Colorado Supreme Court recently ruled that businesses can fire employees who use marijuana during their off-time.²⁸⁷ In that case, an employee of Dish Network became quadriplegic in a car accident and used marijuana to control leg spasms. His marijuana use was lawful under Colorado’s medical marijuana law. In 2010, he was fired from his job as a customer service representative after failing a random drug test. Dish Network has a zero tolerance drug policy.

The employee sued, claiming wrongful termination. A trial court dismissed the suit, finding that the state’s medical marijuana law did not make the use of marijuana a “lawful activity” that is protected against employment discrimination. The Colorado Court of Appeals affirmed, finding the termination was lawful because marijuana is prohibited by federal law. The Colorado Supreme Court upheld these decisions, holding that the federal prohibition on marijuana makes the drug unlawful despite Colorado’s

²⁸⁴ <http://www.ktva.com/cannabis-cafes-conflict-with-anchorage-consumption-laws-763/>

²⁸⁵ Mikos, *Marijuana Localism*, at 748.

²⁸⁶ *Id.*

²⁸⁷ See *Coats v. Dish Network*, 350 P.3d 849 (Colorado 2015)(available at: https://www.courts.state.co.us/userfiles/file/court_probation/supreme_court/opinions/2013/13sc394.pdf).

approval of its use for medicinal purposes. That ruling is not binding on Alaska courts, but it could guide the Alaska Supreme Court if faced with a similar question.

Security

It is anticipated that marijuana establishments will remain a mostly cash-only enterprise for some time. In general, cash-dependent businesses face numerous security risks, including increased likelihood of internal and external theft. Regulations that mandate stringent security protocols, such as extensive video surveillance, can reduce the incentive for illegal activity by increasing the likelihood of detection. The potential for off-premises crimes committed against employees who are paid in cash must also be considered.



These security risks correspond with a growth in business opportunities for marijuana security specialists, ranging from consulting on facilities design, to designing security protocols, to performing security operations.

From: PSUMInfo (CED sponsored) <psuminfo@alaska.gov>
Sent: Tuesday, April 12, 2016 3:18 PM
To: PSUMInfo (CED sponsored)
Subject: Marijuana Control Board meeting on April 27

Pursuant to Alaska Statutes, 17.38.111, the Marijuana Control Board is holding a meeting on April 27, 2016 to consider

- updates on implementation of marijuana establishment licensing
- proposed draft regulations regarding board administration and onsite consumption in marijuana retail stores
- proposed regulation projects brought forward by individual board members
- marijuana handler course provider applications
- other matters that may come before the board

The complete agenda will be available on the [Alcohol and Marijuana Control Office website](#) prior to the meeting. The board will not take public comment at this meeting.

The meeting will be held at 3601 C St (The Frontier Building), Rooms 890 & 896, Anchorage, Alaska, 99503. The public call-in number for the meeting is 1-800-315-6338; code 69173#. The meeting will begin at 9:15 a.m.

This meeting fulfills the statutory requirement that the board will meet in the 3rd Judicial District at least one time each calendar year. Board members from outside of Anchorage will attend telephonically.

The State of Alaska Department of Commerce, Community, and Economic Development complies with Title II of the Americans With Disabilities Act of 1990 and the Rehabilitation Act of 1973. Individuals with disabilities who may need auxiliary aids or services or special modifications to participate in this public meeting should contact John Calder by email at john.calder@alaska.gov to make any necessary arrangements.

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You are receiving this email because you registered to be notified by the State of Alaska when [marijuana initiative FAQs](#) are updated and when the public comment periods on the proposed regulations are scheduled. Please note that a reply to this message will not be considered as public comment.

