

**KODIAK CITY COUNCIL**

**WORK SESSION AGENDA**

**Wednesday, September 9, 2015**  
**Kodiak Public Library Multi-Purpose Room**  
**7:30 p.m.**

*Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.*

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**LOCAL GOVERNMENTS  
AND  
MARIJUANA REGULATION**

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

## I. INTRODUCTION

Recent changes to Alaska's marijuana laws create significant legal challenges for state and local regulators. In November 2014, Alaska voters approved a ballot measure that legalized<sup>1</sup> 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.<sup>2</sup> Following the effective date of this new law, February 24, 2015, a nine-month rulemaking period began for the Alaska Marijuana Control Board to craft the regulatory framework for the industry.<sup>3</sup> According to most estimates, the first licensed retail marijuana establishments will be open to the public in Alaska during the spring of 2016.<sup>4</sup> This means that in less than a year from the date of this memo, Alaska will be one of just three states where people will be able to lawfully grow, buy, and sell recreational<sup>5</sup> marijuana through a state-approved regulatory system, with a fourth (Oregon) following shortly thereafter.<sup>6</sup>

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<sup>1</sup> Ballot Measure 2 is often said to have "legalized" marijuana, but that term can be misleading. "Legalized" implies that an activity is no longer subject to any criminal or civil penalties. But marijuana remains a Schedule VIA controlled substance under the Alaska criminal code and anyone not in strict compliance with state laws regulating marijuana cultivation, use, and sale is subject to a penalty, ranging from a civil fine to felony prosecution. Thus, more accurately, BM2 legalized some marijuana conduct, decriminalized other conduct (a term generally referring to the removal of the threat of jail or prison time for the lowest-level marijuana offenses), and kept yet other conduct illegal. Despite these technical distinctions, derivations of the term "legalize" are commonly used to describe this shift in the law and this memo will keep with the parlance of our times and use the terms "legalize" and "decriminalize" interchangeably. See also Blake and Finlaw, *Marijuana Legalization in Colorado: Lessons Learned*, Harvard Law & Policy Review at 362 n.13 (2014).

<sup>2</sup> 2014 Ballot Measure No. 2 - 13PSUM An Act to Tax and Regulate the Production, Sale, and Use of Marijuana. 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](https://www.commerce.alaska.gov/web/portals/9/pub/MJ_BallotMeasure2.pdf)

<sup>3</sup> 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.

<sup>4</sup> 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. If the board has not adopted regulations by this time, applications may be submitted directly to local regulatory authorities. AS 17.38.110(g). Action must be taken on registration applications within 90 days of receipt. AS 17.38.100(d). This means the first licenses would be issued no later than May 24, 2016.

<sup>5</sup> The terms "recreational" and "medicinal" refer to the purpose for which marijuana use is authorized by law, it does not necessarily refer to a distinct type of marijuana, though there are certain strains of marijuana and marijuana derivatives which lack psychoactive properties and are therefore usually

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. This responsibility then shifted to the newly-formed Marijuana Control Board,<sup>7</sup> but the implementing regulations are not yet complete. Thus though there is a rough framework in place, the full legal landscape of marijuana regulation in Alaska is still uncertain. 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. The regulatory process will also not resolve all of the legal issues raised by marijuana legalization. Further 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.

This memorandum provides general background on marijuana use and production, summarizes federal and state marijuana laws, and discusses relevant provisions of local laws relating to marijuana use and possession.

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exclusively used for medical purposes. In general, lawful medical marijuana use under an applicable state law requires a physician's certification that an individual has a medical condition for which marijuana is a treatment. Recreational marijuana laws allow marijuana use for any personal purpose.

<sup>6</sup> The Oregon Liquor Control Commission will begin accepting applications for growers, wholesalers, processors and retail outlets on January 4, 2016 with the ability for consumers to buy recreational 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>.

<sup>7</sup> See 2015 SCS CSHB 123(FIN) available at <https://www.commerce.alaska.gov/web/portals/9/pub/HB-123.pdf>

## II. MARIJUANA PRODUCTION AND CONSUMPTION TERMINOLOGY<sup>8</sup>

Marijuana is the general term for a preparation of the female<sup>9</sup> 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 which 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.

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<sup>8</sup> 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](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/>).

<sup>9</sup> 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<sup>10</sup>**

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 part. 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.<sup>11</sup> Buds are dried and cured before consumption.



**DRIED MARIJUANA FLOWER/BUD<sup>12</sup>**

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<sup>11</sup> 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.

<sup>12</sup> " Licensed under Public Domain via Wikimedia Commons - [https://commons.wikimedia.org/wiki/File:Bubba\\_Kush.jpg#/media/File:Bubba\\_Kush.jpg](https://commons.wikimedia.org/wiki/File:Bubba_Kush.jpg#/media/File:Bubba_Kush.jpg)

As the rate of consuming marijuana by smoking marijuana flower 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.



**MARIJUANA BUD WITH TRICHOMES<sup>13</sup>**

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.



**KIEF<sup>14</sup>**

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**KIEF<sup>15</sup>**

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



**HASHISH<sup>16</sup>**

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<sup>14</sup> "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)

<sup>15</sup> Licensed under Public Domain via Wikimedia Commons - <https://upload.wikimedia.org/wikipedia/commons/a/a9/Keif.jpg>

<sup>16</sup> Licensed under Public Domain via Wikimedia Commons - <https://commons.wikimedia.org/wiki/File:Hashish-2.jpg#/media/File:Hashish-2.jpg>





**HASHISH**<sup>17</sup>

- **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.

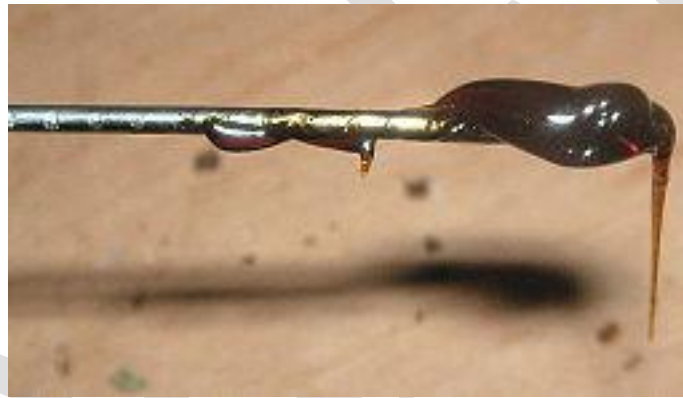
Some extractors used in the hash oil production process are similar in design to a coffee machine, where the solvent drips through the marijuana and leaches out the cannabinoids. The process for extraction can also be similar to that used to extract lavender oils, vanilla extract, or other familiar oils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

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<sup>17</sup> "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)



HASH OIL<sup>18</sup>



HASH OIL<sup>19</sup>

- **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.

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<sup>18</sup> "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](https://commons.wikimedia.org/wiki/File:Drop_of_cannabis_oil.jpg#/media/File:Drop_of_cannabis_oil.jpg)

<sup>19</sup> Licensed under Public Domain via Wikimedia Commons - <https://commons.wikimedia.org/wiki/File:Hash.jpg>



**BUTANE HASH OIL<sup>20</sup>**

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.



**BUTANE HASH OIL "HONEY"<sup>21</sup>**

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<sup>20</sup> Photo by Andres Rodriguez (available at <https://www.flickr.com/photos/symic/8283444548/in/photolist-dGbYqo-dBToNT-dGbJsN-di6oNz-dG6jf8-dBYPid-dpm2WP-dCzfgH-dsQJEj-dBYPts-dyMt4o-dsQyCa-dBrRLv-dsQz1z-dpm386-dCzfx3-dCzfDq-dG6DFa-dsQInq>)

- **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.



**MARIJUANA TINCTURE<sup>22</sup>**

- **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.



**Making Marijuana Butter<sup>23</sup>**

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<sup>21</sup> By Vjiced (Own work) [CC BY-SA 3.0 (<http://creativecommons.org/licenses/by-sa/3.0/>)], via Wikimedia Commons

<sup>22</sup> "Whitewillowtincture" by Badagnani - Own work. Licensed under CC BY 3.0 via Wikimedia Commons - <https://commons.wikimedia.org/wiki/File:Whitewillowtincture.jpg#/media/File:Whitewillowtincture.jpg>

<sup>23</sup> "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 Infusion<sup>24</sup>

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.

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.<sup>25</sup>

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

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<sup>24</sup> “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](https://commons.wikimedia.org/wiki/File:Cannabis_Butter.JPG#/media/File:Cannabis_Butter.JPG)

<sup>25</sup> 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 17.38.9009(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 Cookie w/Label<sup>26</sup>

- “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.

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<sup>26</sup> "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](https://commons.wikimedia.org/wiki/File:KCCS_Cookie.JPG#/media/File:KCCS_Cookie.JPG)

### III. SUMMARY 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. But 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.

#### A. 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.<sup>27</sup> 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.”<sup>28</sup> Other drugs included in Schedule I include ecstasy, heroin, LSD, and peyote.<sup>29</sup> 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.<sup>30</sup> The CSA remains in force and the Supreme Court has upheld the federal government’s ability to regulate marijuana.<sup>31</sup> Federal courts have also

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<sup>27</sup> 28 U.S.C. § 801 *et seq.*

<sup>28</sup> 21 U.S.C. § 812, (b)(1)(A)–(C)

<sup>29</sup> 21 U.S.C. §§ 812(b)(1), 812(c)(c)(10) (2012).

<sup>30</sup> 21 U.S.C. § 841(b) (2012).

<sup>31</sup> *Gonzales v. Raich*, 545 U.S. 1, 22 (2005).

repeatedly affirmed the Drug Enforcement Agency's (DEA) decision to keep marijuana in Schedule I.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup> This was viewed as a "hands-off"<sup>35</sup> policy toward enforcement of federal marijuana laws in states where marijuana use was authorized under those states' laws. But 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.<sup>36</sup> 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 prosecution.<sup>37</sup> A number of enforcement actions

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<sup>32</sup> *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., Chemerinsky, *Cooperative Federalism* 62 UCLA L. REV. 74, 82 at n. 22.

<sup>33</sup> See <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881> for a complete list and restrictions/requirements for each law

<sup>34</sup> 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>

<sup>35</sup> Chemerinsky, *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. Rev. 74, 87 (2015).

<sup>36</sup> Chemerinsky, 62 UCLA L. REV. at 87.

<sup>37</sup> Chemerinsky at 88; U.S. Dep't Of Justice, Office Of The Deputy Attorney General, *Memorandum For All United States Attorneys: Guidance Regarding The Ogden Memo In Jurisdictions Seeking To Authorize Marijuana For Medical Use 2* (2011) [hereinafter *Cole Memo*], available at



followed, or were threatened, and wound up shutting down numerous medical marijuana businesses operating in accordance with state laws throughout the country.<sup>38</sup>

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 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.<sup>39</sup>

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.

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;

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<http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/dag-guidance-2011-for-medical-marijuana-use.pdf>

<sup>38</sup> Chemerinsky at 88., Kamin, *The Limits of Marijuana Legalization in the States*, Iowa Law Review Bulletin, Vol. 99.39 at 40-41. Available at: [http://ilr.law.uiowa.edu/files/ilr.law.uiowa.edu/files/ILRB\\_99\\_Kamin.pdf](http://ilr.law.uiowa.edu/files/ilr.law.uiowa.edu/files/ILRB_99_Kamin.pdf)

<sup>39</sup> Cole Memo II available at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

- 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.<sup>40</sup>

This leaves the states that have “legal-but-not-entirely-legal”<sup>41</sup> 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.<sup>42</sup> This puts marijuana businesses at a serious disadvantage and makes running a marijuana business very difficult. Another burden is the difficulty marijuana businesses have in obtaining basic banking services.<sup>43</sup> 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,

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<sup>40</sup> See Blake and Finlaw at 360 n 6 discussing federal raids.

<sup>41</sup> Chemerinsky at 113

<sup>42</sup> See Kamin at 45 and Leff, *Tax Planning for Marijuana Lawyers* (available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2226416](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226416))

<sup>43</sup> See Kamin, *Limits of Marijuana Legalization* at 47.

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 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, 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), whether marijuana use can be a grounds for revocation of probation or parole.<sup>44</sup>

To remedy this state-federal tension, Congress has been considering several pieces of legislation, including bills which would:

- remove marijuana from the CSA schedule of drugs and the enforcement and punishment provisions of the federal code;<sup>45</sup>
- 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;”<sup>46</sup>
- 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;<sup>47</sup>
- 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;<sup>48</sup>
- prohibit any provision of the CSA from being applied to any person acting in compliance with state marijuana laws;<sup>49</sup> and

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<sup>44</sup> Kamin at 44-47

<sup>45</sup> 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.

<sup>46</sup> States’ Medical Marijuana Patient Protection Act, H.R. 689, 113th Cong. § 4 (2013).

<sup>47</sup> States’ Medical Marijuana Property Rights Protection Act, H.R. 784, 113th Cong. § 3 (2013).

<sup>48</sup> H. Amdt. 748, 113th Cong. (2013–14) (amending Commerce, Justice, Science, and Related Agencies Appropriations Act, H.R. 4660, 113th Cong. (2013–14)).

<sup>49</sup> Respect State Marijuana Laws Act of 2013, H.R. 1523, 113th Cong. § 2 (2013).

- provide legal immunity from criminal prosecution to banks and credit unions providing financial services to marijuana-related businesses acting in compliance with state law.<sup>50</sup>

## **B. Alaska State Laws**

Much like the federal Controlled Substances Act, on its face the Alaska Criminal Code prohibits all marijuana-related activity.<sup>51</sup> There are, however, three exceptions to 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.<sup>52</sup> Alaska is now one of just four state 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.<sup>53</sup> This law permits individuals who have consulted with a doctor and registered with the state to use marijuana to treat “debilitating medical conditions.”<sup>54</sup> 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 18 to possess a small amount of marijuana in the home for personal use.

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

## **C. Interplay Between Federal and State 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

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<sup>50</sup> Marijuana Business Access to Banking Act of 2013, H.R. 2652, 113th Cong. § 3 (2013).

<sup>51</sup> 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).

<sup>52</sup> See generally AS 17.38 *et seq.*

<sup>53</sup> AS 17.37.080

<sup>54</sup> AS 17.37.070(4)

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 whether the federal CSA preempts state laws that conflict with the CSA, and full analysis of this question is beyond the scope of this memo.<sup>55</sup> But, 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.<sup>56</sup> States can therefore experiment with different legalization and decriminalization programs, but the resulting state-federal relationship is complicated and potentially antagonistic.

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<sup>55</sup> Several state courts have ruled against local government officials seeking to invalidate state medical marijuana laws as preempted by federal law U.S Supreme Court denied certiorari when it was sought in these cases. See Chemerinsky, 62 UCLA L. Rev 74, at 102 and Mikos, *On the Limits of Supremacy: Medical Marijuana and the States' Overlooked Power to Legalize Federal Crime*, 62 Vand. L. Rev. 1419.

<sup>56</sup> *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); Robert A. Mikos, *On The Limits Of Supremacy: Medical Marijuana And The States' Overlooked Power To Legalize Federal Crime*, 62 VAND. L. REV. 1421, 1446 (2009) ("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.").

#### **IV. STATE REGULATION OF MARIJUANA IN ALASKA**

As explained above, Alaska's marijuana laws are unique in the nation. Two other states, Colorado and Washington, currently allow personal possession and retail sale of limited amounts of marijuana for recreational use, and Oregon will join them in the fall of 2015.<sup>57</sup> Twenty-two other states and Washington, DC allow some form of marijuana cultivation, sale, and use for medicinal purposes. But 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.

##### **A. Alaska's Definition of Marijuana**

As explained above, 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

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<sup>57</sup> 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>.

any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.<sup>58</sup>

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.<sup>59</sup> 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.” AS 17.38.900(6). 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. AS 11.71.900(14). 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 Schedule IIIA controlled substance, which has a higher degree of probable danger and a corresponding greater penalty for use.<sup>60</sup>

The incongruence between these definitions illustrates the complexity of modern marijuana regulation. “Traditional” marijuana, the actual flowers and buds, or other smoke-able THC-containing parts of the cannabis plant, are now consumed/used apace with other marijuana derivatives, such as edibles and concentrates.<sup>61</sup>

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<sup>58</sup> AS 17.38.900(6)

<sup>59</sup> 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).

<sup>60</sup> AS 11.71.060(f)(1),(2)

<sup>61</sup> The statutes created by BM2 provide some additional clarification by defining terms such as “marijuana products” (“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.” AS 17.38.900(11))

## B. Personal marijuana use, possession, cultivation and transfer

### 1. Recreational Marijuana Use

Alaska law allows individuals to possess and use marijuana recreationally. 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.<sup>62</sup>
- Possessing, growing, processing, or transporting no more than six marijuana plants (with three or fewer being mature, flowering plants).<sup>63</sup>
- Possession of the marijuana produced by lawfully-possessed marijuana plants on the premises where the plants were grown.<sup>64</sup>
- 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.<sup>65</sup>
- Non-public<sup>66</sup> consumption<sup>67</sup> of marijuana.<sup>68</sup>
- Assisting another person who is 21 years of age or older with any lawful marijuana conduct described in AS 17.38.<sup>69</sup>
- Possessing, using, displaying, purchasing, or transporting marijuana accessories.<sup>70</sup>
- Manufacture, possess, or purchase marijuana accessories.<sup>71</sup>

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<sup>62</sup> AS 17.38.020(1)

<sup>63</sup> AS 17.38.020(2).

<sup>64</sup> AS 17.38.020(2)

<sup>65</sup> AS 17.38.020(3)

<sup>66</sup> "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. More info re: public: <http://www.adn.com/article/20150205/what-if-my-neighbors-pot-smoke-violates-my-air-space>; See also ADN story re: cannabis clubs and include this in local reg section: <http://www.adn.com/article/20150702/state-takes-aim-marijuana-social-clubs>

<sup>67</sup> Consumption means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body. AS 17.38.900(3)

<sup>68</sup> 17.38.020(4)

<sup>69</sup> AS 17.38.020(e)

<sup>70</sup> AS 17.38.010(1), .060

<sup>71</sup> 17.38.060



- Distribution or sale of marijuana accessories to a person who is 21 years of age or older.<sup>72</sup>

## 2. Medical Marijuana

Alaska law allows individuals to possess and use marijuana to treat certain medical conditions under the direction of a physician.<sup>73</sup> An individual seeking to do so must first become a registered medical marijuana patient by submitting an application to join the Medical Marijuana Registry.<sup>74</sup> 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"<sup>75</sup> and that the patient might benefit from the medical use of marijuana.<sup>76</sup> 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.<sup>77</sup>

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).<sup>78</sup> They may not smoke marijuana in public, but may possess it in public under certain 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.<sup>79</sup>

A medical marijuana patient may also designate a "primary caregiver" and an "alternative caregiver."<sup>80</sup> The caregiver designation means patients with debilitating

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<sup>72</sup> 17.38.060

<sup>73</sup> AS 17.37.010–17.37.080 (2012)

<sup>74</sup> Application available at: <http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/MedicalMarijuana.pdf>

<sup>75</sup> See ALASKA STAT. § 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.").

<sup>76</sup> § 17.37.010(c).

<sup>77</sup> § 17.37.010.

<sup>78</sup> § 17.37.040(a)(4)(A)–(B).

<sup>79</sup> AS 17.37.040(a)(2)(A)–(C).

<sup>80</sup> § 17.37.010(a).

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.<sup>81</sup>

The medical marijuana law does not authorize patients or caregivers to buy or sell marijuana.<sup>82</sup> Registered medical marijuana patients and their caregivers have an affirmative defense to prosecution for marijuana-related activity that would otherwise violate state law.<sup>83</sup>

### 3. The Ravin Doctrine

The Alaska Supreme Court's 1975 decision in the case *Ravin v. State of Alaska* created a legal doctrine that permits adults (those over 18 years of age) to possess and use a modest amount of marijuana in their homes.<sup>84</sup> *Ravin* was based on an interpretation of the Alaska Constitution's right of privacy. The court balanced that 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).<sup>85</sup> It does not permit transporting marijuana

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<sup>81</sup> See § 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 §§ 17.37.010–17.37.080 (omitting a definition of a primary or alternative caregiver). But 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." § 17.37.010(c)(3). It follows that the caregiver for an adult patient would serve in a similar role.

<sup>82</sup> Alaska law only permits the primary caregiver to "deliver" marijuana to his or her patient, and vice versa. § 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." § 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.").

<sup>83</sup> AS 17.37.030(a).

<sup>84</sup> 537 P.2d 494 (Alaska 1975).

<sup>85</sup> This four ounce limit includes usable marijuana as well as the weight of any marijuana plants. See *Noy v. State*. "For purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight

in public, commercial marijuana activity, any marijuana use by minors, or driving under the influence of marijuana.

#### **4. 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.<sup>86</sup>
- 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;<sup>87</sup>
- Marijuana plants must be secure from unauthorized access;<sup>88</sup>
- 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.<sup>89</sup>
- Persons 21 and over may possess, purchase, distribute, or sell marijuana grow accessories.<sup>90</sup>

### **C. Commercial Marijuana Production And Sale**

#### **1. Comparison Of State Laws Regulating Commercial Marijuana Production And Sale**

Colorado, Washington, Alaska, and Oregon have legalized the 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 recreational marijuana. Alaska and Oregon followed suit in 2014 and those states are in the process of developing 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

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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.

<sup>86</sup> AS 17.38.020(2).

<sup>87</sup> AS 17.38.030(a)(1)

<sup>88</sup> AS 17.38.030(a)(2).

<sup>89</sup> AS 17.38.030(a)(3).

<sup>90</sup> AS 17.38.060, AS 17.38.900(7).

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.<sup>91</sup>

## 2. Marijuana Establishments

BM2 requires state or local regulators to establish a system of licensing and control under which the commercial marijuana industry in Alaska will function. The Act does not instruct any public or private organization to establish retail outlets for sale of marijuana in Alaska, nor does it guarantee that any will exist. The ballot measure assumes that demand for retail marijuana exists in Alaska and will allow the market to operate to meet that demand.

The act authorizes the operation of four types of “marijuana establishments”<sup>92</sup> in the state: marijuana cultivation facilities,<sup>93</sup> marijuana testing facilities,<sup>94</sup> marijuana product manufacturing facilities,<sup>95</sup> and retail marijuana stores.<sup>96</sup> 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.<sup>97</sup>

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<sup>91</sup> 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](https://www.alaskasenate.org/2016/files/5614/1763/1020/Leg_Research_Report_on_Marijuana_Legalization.pdf))

<sup>92</sup> 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.

<sup>93</sup> 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.”

<sup>94</sup> AS 17.38.900(12); “an entity registered to analyze and certify the safety and potency of marijuana.”

<sup>95</sup> 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.”

<sup>96</sup> 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.”

<sup>97</sup> AS 17.37.080(a)-(d)

### 3. 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:<sup>98</sup>

#### **Retail Marijuana Store<sup>99</sup>**

- (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.

#### **Marijuana Cultivation Facility<sup>100</sup>**

- (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.

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<sup>98</sup> AS 17.38.070(e) provides that it is lawful under Alaska law to lease or otherwise allow property to be use as a marijuana establishment.

<sup>99</sup> AS 17.38.070(a)(1)-(6)

<sup>100</sup> AS 17.38.070(b)(1)-(6)

### **Marijuana Product Manufacturing Facility**<sup>101</sup>

- (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 Facility**<sup>102</sup>

- (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.

## **4. State and Local Regulatory Authority**

The Act grants the Alaska Legislature the authority to establish a Marijuana Control Board (MCB) to oversee the cultivation, manufacture, and sale of marijuana in the state.<sup>103</sup> In the absence of the creation of such a board, the authority for rulemaking and the promulgation of regulations rests with the Alcoholic Beverage Control (ABC) Board.<sup>104</sup> The Alaska Marijuana Control Board was established in April 2015<sup>105</sup> and thus

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<sup>101</sup> AS 17.38.070(c)(1)-(6)

<sup>102</sup> AS 17.38.070(d)(1)-(3)

<sup>103</sup> AS 17.38.080

<sup>104</sup> AS 17.38.080

<sup>105</sup> See HB 123; [http://www.legis.state.ak.us/basis/get\\_fulltext.asp?session=29&bill=HB123](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). Though 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>.

has 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.

If the MCB fails to establish applicable regulations within that time frame, the authority to regulate does not revert to the legislature. Rather, the authority to regulate would fall to local governments, who would then be responsible for administering the recreational marijuana industries within their political boundaries.<sup>106</sup> At this time, the MCB has announced a rulemaking timeline that includes completion and adoption of the regulations by the November 24, 2015 deadline.<sup>107</sup>

## 5. Regulatory Guidelines

Whether the regulatory authority rests with the MCB or a local governing body, adopted regulations must include and comply with the following:<sup>108</sup>

- 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;
- 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;

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<sup>106</sup> AS 17.38.110

<sup>107</sup> See “What is the timeline for implementation of the proposition?” at <http://commerce.state.ak.us/dnn/abc/MarijuanaInitiativeFAQs.aspx>

<sup>108</sup> AS 17.38.090

- Reasonable restrictions on the advertising and display of marijuana and marijuana products; and
- Civil penalties for the failure to comply with regulations made pursuant to this chapter.

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

- Each application for a registration to operate a marijuana establishment must be submitted to the MCB.<sup>109</sup>
- 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.<sup>110</sup>
- 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).<sup>111</sup>
- The MCB shall issue an annual registration to an applicant within 45-90 days of receipt of an application or a renewal application.<sup>112</sup> 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.<sup>113</sup>

These lists may be expanded, as the MCB maintains broad power over the cultivation, manufacture, and sale of marijuana in the state.<sup>114</sup> The MCB also has identified goals which will likely guide and influence its rulemaking:

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<sup>109</sup> AS 17.38.100(a)

<sup>110</sup> AS 17.38.100(a)

<sup>111</sup> AS 17.38.100(c)

<sup>112</sup> AS 17.38.100(c).

<sup>113</sup> AS 17.38.100(c).

<sup>114</sup> AS 17.38.084(a)



- 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.<sup>115</sup>

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;<sup>116</sup> (2) legislation “tantamount to repeal” is similarly prohibited;<sup>117</sup> and the Act prohibits rules that make the operation of retail marijuana establishments “unreasonably impracticable.”<sup>118</sup>

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 Marijuana Control Board and local governments.

## 6. Regulatory Process To-Date

Ballot Measure 2 established the broad framework for regulating marijuana in Alaska. The task of crafting the specific implementing rules was charged to the ABC Board, or a Marijuana Control Board, if the Legislature created one. Legislation creating the MCB passed on the last day of the 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 the most recent legislative session, though several marijuana-related bills were introduced.

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<sup>115</sup> 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](http://commerce.state.ak.us/dnn/Portals/9/pub/Preliminary_Considerations_for_ImplementationofAS%2017.38.pdf)

<sup>116</sup> AK Const. Art. XI, Sec. 6

<sup>117</sup> *Warren v. Thomas*, 568 P.2d 400 (1977)

<sup>118</sup> 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)

Prior to the creation of the MCB, the ABC Board implemented one emergency regulation and drafted two sets of proposed regulations.<sup>119</sup> The emergency regulation defined public use of marijuana and was intended to assist law enforcement's and the public's understanding of the state's new marijuana laws.<sup>120</sup> The first set of proposed regulations, issued on May 19, 2015 and then revised on July 6, 2015, involved local option regulations and contained numerous definitions.<sup>121</sup>

The local option regulations are of significant concern to local governments. The proposed local option regulations are modeled on the Alaska local option statutes for alcohol establishments. The proposed 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.<sup>122</sup>

The second set of proposed regulations, also issued on July 6, 2015, focused on the operation of marijuana establishments, including licensing requirements and fees, the day-to-day logistics of running a retail marijuana establishment, and public health and safety issues. Several regulations in this section will be of concern to local governments. During the application period, local governments may protest an application,<sup>123</sup> may suggest conditions for a new application or renewal (and will have responsibility for monitoring compliance with such adopted conditions),<sup>124</sup> and are expected to notify the

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<sup>119</sup> Available at: <https://www.commerce.alaska.gov/web/abc/MarijuanaRegulations.aspx>

<sup>120</sup> Under 3 AAC 304.990, the term "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." Available at: [https://www.commerce.alaska.gov/web/Portals/9/pub/ABC\\_Board\\_Emergency\\_Regulations\\_2015-02-24.pdf](https://www.commerce.alaska.gov/web/Portals/9/pub/ABC_Board_Emergency_Regulations_2015-02-24.pdf)

<sup>121</sup> Proposed definitions included definitions of the terms "assist", "personal cultivation", "adulterated food or drink product", "edible marijuana product", "licensed premises", "local governing body", "marijuana concentrate", "marijuana product", "marijuana plant", and "possess". [https://www.commerce.alaska.gov/web/Portals/9/pub/MJ\\_Regulations\\_Set\\_1\\_PCR2.pdf](https://www.commerce.alaska.gov/web/Portals/9/pub/MJ_Regulations_Set_1_PCR2.pdf)

<sup>122</sup> Available at: [https://www.commerce.alaska.gov/web/Portals/9/pub/MJ\\_Regulations\\_Set\\_1\\_PCR2.pdf](https://www.commerce.alaska.gov/web/Portals/9/pub/MJ_Regulations_Set_1_PCR2.pdf). See also: <http://www.adn.com/article/20150430/state-board-proposes-alaska-s-first-marijuana-regulations>

<sup>123</sup> 3 AAC 306.055(a)

<sup>124</sup> 3 AAC 306.055(c) [note: there appears to be a typo in the draft regulations; this may be subsection (b).]

Board if marijuana establishments violate any applicable statute or regulation.<sup>125</sup> 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.”<sup>126</sup> 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.

Other proposed regulations of note include:<sup>127</sup>

- Who cannot obtain a license: those who have a previous felony conviction or those who have operated a “marijuana delivery service, a marijuana club, or a marijuana establishment illegally” two years before the regulations go into effect.<sup>128</sup>
- Zoning restrictions: “The board will not issue a marijuana establishment license if the licensed premises will be located within 200 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 or immediately adjacent to a liquor license premises.”<sup>129</sup>
- 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.<sup>130</sup>
- Application fee for new establishment license set at \$1,000.<sup>131</sup>
- Annual license fees set at:
  - for a marijuana retailer license, \$5000;
  - for a limited marijuana cultivation facility license, \$1000;

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<sup>125</sup> 3 AAC 306.055(d) [note: there appears to be a typo in the draft regulations; this may be subsection (c).]

<sup>126</sup> 3 AAC 306.340, .730

<sup>127</sup> Note: all AAC citations in this section are proposed draft regulations available at: [https://www.commerce.alaska.gov/web/Portals/9/pub/Set\\_2\\_All\\_Articles\\_PCR1.pdf](https://www.commerce.alaska.gov/web/Portals/9/pub/Set_2_All_Articles_PCR1.pdf)

<sup>128</sup> 3 AAC 306.010(d)

<sup>129</sup> Proposed 3 AAC 306.010(a), (b)

<sup>130</sup> 3 AAC 306.015

<sup>131</sup> 3 AAC 306.095(a)

- for a marijuana cultivation facility license, \$5000;
  - for a marijuana cultivator’s broker license, \$5000;
  - for a marijuana extract only manufacturing facility license, \$1000; (6) for a marijuana product manufacturing facility license, \$5000;
  - for a marijuana testing facility license, \$1000.<sup>132</sup>
- Retail stores will have to comply with requirements for signage, hours of operations, restricting certain areas, and requirements for marijuana handler permits for employees.<sup>133</sup>
  - Marijuana sales transactions will be limited to the following:
    - one ounce of usable marijuana;
    - sixteen ounces of marijuana-infused product in solid form;
    - seven grams of marijuana-infused extract for inhalation, or
    - seventy-two ounces of marijuana-infused product in liquid form<sup>134</sup>
  - The proposed regulations define “delivery” to mean “hand to a person who purchases the product on licensed premises only; “deliver” does not mean transfer or transport to a consumer off the licensed premises.”<sup>135</sup> This appears to preclude the operation of marijuana delivery services,<sup>136</sup> or from shipping marijuana to customers. Another regulation also prohibits Internet sales.<sup>137</sup>

#### **D. Penalties For Marijuana Cultivation, Possession, and Sale**

As explained above, Alaska state law generally proscribes all marijuana-related activities, but limited marijuana production, use, possession, and sale is permitted in certain circumstances. When activities fall outside of those narrow conditions, criminal penalties 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.

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<sup>132</sup> 3 AAC 306.095(d)

<sup>133</sup> 3 AAC 306.310, .320, .325, .715

<sup>134</sup> 3 AAC 306.335

<sup>135</sup> 3 AAC 306.305(a)(1)

<sup>136</sup> Several marijuana delivery services are already in operation, and have been cited by authorities. See <http://www.adn.com/article/20150131/anchorage-police-arrest-marijuana-delivery-driver-sting-operation>; <http://www.ktva.com/anchorage-police-seize-marijuana-delivery-cars-246/>

<sup>137</sup> 3 AAC 306.310(a)(4)

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 would be charged under the existing criminal statutes prohibiting marijuana possession.

During the past legislative session, the Alaska legislature considered several bills aimed at updating Alaska’s statutes to reflect recent changes in state marijuana laws.<sup>138</sup> 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.<sup>139</sup>

Public consumption of marijuana is classified as a violation punishable by a fine up to \$100.<sup>140</sup>

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 public) is a violation punishable by a fine up to \$750.<sup>141</sup>

### **MARIJUANA MISDEMEANORS**

- **Misconduct Involving a Controlled Substance in the Sixth Degree (MICS-6).**

This crime includes:

- Use or display of any amount of marijuana. AS 11.71.060(a)(1)<sup>142</sup>
- Possession of less than one ounce of marijuana. AS 11.71.060(a)(2)<sup>143</sup>

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<sup>138</sup> See, e.g. SB30, HB75.

<sup>139</sup> AS 11.81.900(63)

<sup>140</sup> AS 17.38.040.

<sup>141</sup> AS 17.38.030(b)

<sup>142</sup> AS 17.38.020(A) renders this section inapplicable to persons over 21 who are in possession of one ounce or less of marijuana.

<sup>143</sup> AS 17.38.020(A) renders this section inapplicable to persons over 21 who are in possession of one ounce or less of marijuana.

- Penalty: Class B Misdemeanor; punishable by up to 90 days in prison and a \$2,000 fine.<sup>144</sup>

- **Misconduct Involving a Controlled Substance in the Fifth Degree (MICS-5).**

This crime includes:

- Manufacture or delivery,<sup>145</sup> or possession with intent to manufacture or deliver, less than one ounce of marijuana.<sup>146</sup>
- Possession of one ounce or more of marijuana<sup>147</sup>
  - Penalty: Class A Misdemeanor, is punishable by up to one year in prison and a \$10,000 fine:<sup>148</sup>

### 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.<sup>149</sup>
- Possession of four ounces or more of marijuana. AS 11.71.040(a)(3)(F)
- 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. AS 11.71.040(a)(4)(A)(i)-(ii), 11.71.040(a)(4)(B)
- Possession of 25 or more marijuana plants. AS 11.71.040(a)(3)(G), (d).
  - Penalty: Class C Felony, punishable by a prison sentence of up to five years and a \$50,000 fine.<sup>150</sup>

- **Misconduct Involving a Controlled Substance in the Third Degree (MICS-3).**

This crime includes:

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<sup>144</sup> AS 11.71.060(b); 12.55.135(b); 12.55.035(b)(6).

<sup>145</sup> "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).

<sup>146</sup> 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.

<sup>147</sup> AS 11.71.050(a)(2)(E). Under AS 17.38, this would be applicable to amounts greater than one ounce.

<sup>148</sup> AS 12.55.135(a); 12.55.035(b)(5); AS 11.71.050(b)

<sup>149</sup> AS 11.71.040(a)(2). Under AS 17.38, this would be applicable to amounts greater than one ounce.

<sup>150</sup> AS 11.71.040; 12.55.125(e); 12.55.035(b)(4).

- 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.<sup>151</sup>
  - Penalty: Class B Felony, punishable by a prison sentence of up to ten years and a \$100,000 fine.<sup>152</sup>

### **E. 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).<sup>153</sup> Driving while under the influence (DUI) is a Class A misdemeanor, with increasing minimum penalties depending on the number of prior convictions,<sup>154</sup> or it can be a Class C Felony depending on the number and recentness of prior convictions.<sup>155</sup>

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.<sup>156</sup> 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.<sup>157</sup>

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<sup>151</sup> AS 11.71.030(a)(2).

<sup>152</sup> AS 11.71.030(C); AS 12.55.125(d); AS 12.55.035(b)(3).

<sup>153</sup> AS 25.35.030(a)(1)

<sup>154</sup> AS 25.35.030(b)

<sup>155</sup> AS 25.35.030(n)

<sup>156</sup> 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>

<sup>157</sup> See Blake and Finlaw, *Marijuana Legalization in Colorado: Lessons Learned* 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>.

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.”<sup>158</sup> 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.<sup>159</sup> The state takes a zero tolerance approach, criminalizing driving with any amount of controlled substances (including THC) in the bloodstream.<sup>160</sup>

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, 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.<sup>161</sup>

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

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<sup>158</sup> See Blake and Finlaw at 376; See <http://www.npr.org/2014/05/21/314279711/without-a-marijuana-breathalyzer-how-to-curb-stoned-driving>

<sup>159</sup> AS 25.35.030(a)(2) specifies th blood alcohol content (BAC) of 0.08% or more constitutes driving under the influence of alcohol.

<sup>160</sup> i.e., any amount of THC renders a driver *per se* impaired

<sup>161</sup> <http://www.npr.org/2014/02/23/280310526/with-support-for-marijuana-concern-over-driving-high-grows>



## V. LOCAL REGULATION OF MARIJUANA IN ALASKA

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.<sup>162</sup>

Regulation of the commercial marijuana industry in Alaska will involve a mix of state and local oversight. The statutes enacted by BM2 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 Marijuana Control Board (MCB), fails to adopt regulations pursuant to AS 17.38.090, or does not timely accept or process registration applications pursuant to AS 17.38.100, there is a mechanism for local governments to establish a local regulatory agency and fill that role.<sup>163</sup>

Otherwise, local governments may enact ordinances governing the time, place, manner, and number of marijuana establishment operations within its jurisdiction;<sup>164</sup> and may establish and enforce civil penalties for violation of such time, place, manner, and number ordinances.<sup>165</sup>

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.<sup>166</sup> 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.<sup>167</sup> Such notification must occur prior to the MCB's registration decision.

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<sup>162</sup> See Mikos, *Marijuana Localism*, 65 *Case Western L Rev* 719 (2015)

<sup>163</sup> 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).

<sup>164</sup> AS 17.38.110(b)

<sup>165</sup> AS 17.38.110(b)

<sup>166</sup> AS 17.38.100(c)

<sup>167</sup> AS 17.38.100(d)

## A. Minimum Local Regulations

At a minimum, local governments in Alaska must:

1. Permit personal use, possession and cultivation of marijuana.<sup>168</sup>
2. Permit persons over 21 to manufacture, possess, or purchase marijuana accessories.<sup>169</sup>
3. *[insert additional items]*

## B. 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 Alaska* regarding individual constitutional privacy rights and marijuana use and possession.

*[summarize opt-out provisions after regs completed; add additional discussion re: opt out legal issues]*

## C. 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.<sup>170</sup>

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<sup>168</sup> AS 17.38.020

<sup>169</sup> AS 17.38.060. "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body. AS 17.38.900(7).

<sup>170</sup> 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.

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. Relevant code sections from Cordova, Homer, and Kodiak are discussed below.

**Cordova:** The Cordova Municipal Code prohibits the use or be under the influence of certain drugs within the city. It is likely that marijuana is included in the list of prohibited substances, though the list referenced in the Code refers to a 1979 Alaska Statute that has since been amended.<sup>171</sup> Cordova also prohibits any person from being in public and intoxicated in such a manner as to be hazardous to motor vehicle traffic.<sup>172</sup> It appears that failure to comply with either of these code sections are considered violations.<sup>173</sup>

**Homer:** The Homer City Code prohibits the sale or possession of “drug paraphernalia,”<sup>174</sup> which has a comprehensive definition covering most items used in the cultivation and consumption of marijuana.<sup>175</sup> Violation of these code sections is punished under the “general penalty” provision of the Homer City Code.<sup>176</sup> However, the Code does contain an exception for “drug paraphernalia” that is “specifically authorized and permitted under the provisions of AS Title 17 and by such rules and regulations as are adopted pursuant thereto.”<sup>177</sup>

**Kodiak:** The Kodiak City Code prohibits the possession and use of “narcotic drug[s]”<sup>178</sup> and “drug paraphernalia.”<sup>179</sup> “Drug paraphernalia” also has a broad definition which covers most items used in the cultivation and consumption of marijuana.<sup>180</sup> However, the code does have an exception stating that “This section

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<sup>171</sup> Cordova Mun. Code Sec. 9.12.010 (amended 1979)

<sup>172</sup> Cordova Mun. Code Sec. 9.12.020 (amended 1979)

<sup>173</sup> Cordova Mun. Code Sec. 9.40.010 (amended 1979)

<sup>174</sup> Homer City Code Sec. 6.12.020 (amended 1982)

<sup>175</sup> Homer City Code Sec. 6.12.010 (amended 1982)

<sup>176</sup> Homer City Code Sec. 6.12.030 (amended 1982)

<sup>177</sup> Homer City Code Sec. 6.12.020 (amended 1982)

<sup>178</sup> Kodiak City Code Sec. 08.48.010

<sup>179</sup> Kodiak City Code Sec. 08.48.020

<sup>180</sup> Kodiak City Code Sec. 08.48.020(c)

shall not apply to . . . any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items.”<sup>181</sup> Thus this section may not apply to lawfully registered marijuana establishments.

#### **D. Recently-Enacted Local Regulations**

Several local governments have taken steps to begin regulating marijuana.

Just a few weeks after the 2014 election, the Anchorage Assembly voted against an ordinance that would have banned commercial marijuana.<sup>182</sup> In January 2015, the Anchorage Assembly passed Ordinance No. AO 2015-7, which prohibited the consumption of marijuana in a public place; and added public consumption of marijuana to the list of minor offenses punishable by a fine of \$100. The ordinance’s definition of “public place” is more expansive than the definition adopted by the State’s emergency rule:

"a place to which the public or a substantial group of persons has access and includes, but is not limited to, streets, highways, sidewalks, alleys, transportation facilities, parking areas, convention centers, sports arenas, schools, places of business or amusement, shopping centers, malls, parks, playgrounds, prisons, and hallways, lobbies, doorways and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence."<sup>183</sup>

Similar ordinances were enacted in Wasilla, the City of North Pole, City of Palmer, City and Borough of Wrangell. (confirm these with HCW)

Anchorage also passed an ordinance banning certain marijuana extraction processes.<sup>184</sup> This ordinance is designed to prohibit the manufacture of butane hash oil, or other marijuana concentrates by use of solvents containing compressed flammable gases or other dangerous solvents.<sup>185</sup> Violation of this ordinance is a class A misdemeanor.

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<sup>181</sup> Kodiak City Code Sec. 08.48.020(d)(1)

<sup>182</sup> <http://www.adn.com/article/20141216/residents-brings-concerns-anchorage-assembly-over-possibly-limiting-commercial>

<sup>183</sup> [https://www.municode.com/library/ak/anchorage/ordinances/code\\_of\\_ordinances?nodeId=704704](https://www.municode.com/library/ak/anchorage/ordinances/code_of_ordinances?nodeId=704704);  
<http://www.muni.org/Departments/police/Pages/KnowYourGrow.aspx>

<sup>184</sup> Anch. Ord. 2015-13;  
[https://www.municode.com/library/ak/anchorage/ordinances/code\\_of\\_ordinances?nodeId=704710](https://www.municode.com/library/ak/anchorage/ordinances/code_of_ordinances?nodeId=704710)

<sup>185</sup> Common names and types of product include “shatter,” butane or CO2 hash oil, “ring pots,” butter, hash, hashish, kief, oil, or wax. <http://www.muni.org/Departments/police/Pages/KnowYourGrow.aspx>

Anchorage added marijuana smoke to the City’s “secondhand smoking” provisions, requiring businesses and building owners to add a reference to marijuana smoke to all “No Smoking” signs.<sup>186</sup> A similar measure was enacted in the City and Borough of Juneau.

The City of Fairbanks passed a marijuana zoning ordinance<sup>187</sup> and added disturbing the peace with marijuana smoke to the list of the City’s punishable offenses.<sup>188</sup>

DRAFT

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<sup>186</sup> <http://www.adn.com/article/20150609/anchorage-assembly-votes-include-marijuana-smoke-tobacco-ban>

<sup>187</sup> <http://www.adn.com/article/20150528/fairbanks-drafts-zoning-rules-commercial-marijuana-operations>

<sup>188</sup> [http://www.newsminer.com/news/local\\_news/city-adds-marijuana-to-disturbing-the-peace-code/article\\_7fac13c6-e7f9-11e4-af52-df606e0f020f.html](http://www.newsminer.com/news/local_news/city-adds-marijuana-to-disturbing-the-peace-code/article_7fac13c6-e7f9-11e4-af52-df606e0f020f.html)

## VI. REVENUE-GENERATING REGULATION OF MARIJUANA

### A. Marijuana and Revenue-Generating Opportunities:

Many communities have used marijuana to generate revenue for their communities. Generally, 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.

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.”<sup>189</sup>

### B. Municipal Sales, Use and Excise Tax:

The tax portion of this section is reserved as we are still researching the implications of instituting a sales, use and excise tax.

AS 17.38.100 mandates that individuals must register with the Marijuana Control Board to operate a marijuana establishment. The Board will begin accepting registration applications on February 24, 2016.

Upon receiving an application, the Board 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 establishment license is set at \$1,000. The annual license fees are 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 cultivator’s broker license, \$5000;
- for a marijuana extract only manufacturing facility license, \$1000; (6) for a marijuana product manufacturing facility license, \$5000;
- for a marijuana testing facility license, \$1000.

The application fees will generate a steady stream of revenue on an annual basis for local municipalities.

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<sup>189</sup> *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978).

### C. 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 pot-friendly hotels, and other opportunities to consume marijuana.<sup>190</sup> Recreational Marijuana became legal in Colorado and Washington in 2014. Hotels.com found that Denver hotel searches 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.<sup>191</sup> Other entrepreneurs are creating cannabis cooking classes, spa treatments and pot-smoking airport layovers.<sup>192</sup> Municipalities should be prepared to work with small business owners given the success of the marijuana tourism industry.

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<sup>190</sup> 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/>

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

## **VII. 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. Early introduction and consideration of these zoning and land use issues will be necessary to ensure a smooth transition when the Marijuana Control Board begins accepting business licenses applications in February 2016.

### **A. 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 Marijuana Control Board 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 200-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. 3 AAC 306.010 prohibits the Marijuana Control Board from issuing a marijuana establishment license if the premises are located in or immediately adjacent to a liquor license premises.

The regulation also prohibits the Marijuana Control Board from issuing a marijuana establishment license when a municipality protests the application under 3 AAC 306.055 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.

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.



## **B. 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 memorandum 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.

## **C. 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. The City 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.

## **D. Ventilation**

Municipalities should also consider amending 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's 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.

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 possibly impacting 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 proposed regulations contain a provision discussing waste removal. Specifically, 3 AAC 306.735 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.

#### **E. 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.

## VIII. PRESENT AND FUTURE MARIJUANA 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 memo. 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 serious 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. But 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 lookback and process-oriented learning; reorganizing, rebuilding, and restaffing critical state regulatory institutions; and changes in culture in state and local government, among interest groups, and among the public.”<sup>193</sup>

Implementing a marijuana legalization law involves “design, construction, and execution of institutions, rules, and processes related to a system of legalized marijuana.”<sup>194</sup> According to Brookings, “Success occurs when those institutions, rules, and processes produce a system consistent with the goals of that policy.” This raises the biggest

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<sup>193</sup> 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>)

<sup>194</sup> Hudak at 4.

current challenge for Alaska: the regulations that will govern the state’s marijuana industry have not yet been finalized. 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 experience with retail marijuana sales, as those states’ recreational marijuana industries followed years of permitting commercial sale of medical marijuana.

### **A. Homegrows**

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

There are several risks inherent in homegrow practices. First, there is risk that homegrowers 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, homegrows present problems relating to product safety and quality assurance. Homegrows also raise more localized concerns, including environmental hazards and increased crime.

A final, specific issue raised by homegrows 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, vaping, or cooked 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.<sup>195</sup>

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<sup>195</sup> 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](http://www.newsminer.com/news/local_news/hash-oil-cited-in-north-pole-explosion-that-damaged-home/article_88f8195e-8005-11e4-8979-73b90be67d4f.html)

## B. Edible Marijuana

Edible marijuana has proven to be a challenging aspects 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).<sup>196</sup>



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 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

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<sup>196</sup> [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s\\_cid=mm6428a6\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s_cid=mm6428a6_e)

problematic. One oft-mentioned example is the marijuana brownie that contains six servings.<sup>197</sup> 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.<sup>198</sup> Thus, new users may overconsume 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.<sup>199</sup>

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.<sup>200</sup> 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.

### **C. Defining Public v. Private Use and Marijuana Social Clubs**

Marijuana use is only permitted in private, which has raised issues for individuals who wish to use marijuana in social settings and businesses who want to accommodate those users. Public use rules, regulations that do not permit marijuana to be consumed 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.

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<sup>197</sup> Hudak at 13.

<sup>198</sup> Hudak at 13.

<sup>199</sup> [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s\\_cid=mm6428a6\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s_cid=mm6428a6_e)

<sup>200</sup> Hudak at 13.

This matter is coming to a head in Denver. Recently, the Colorado Symphony Orchestra (CSO) planned a series of fundraising concerts titled “Classically Cannabis,” promoted as a trio of bring-your-own marijuana events with a smoking lounge provided. The City of Denver asked the CSO to cancel the events over concerns that the concerts would violate state and city laws banning public marijuana consumption.<sup>201</sup> The gallery where the concerts were to be held was a private venue with a smoking lounge planned on an outdoor patio; the city argued that this could be considered a public place under Colorado law. The CSO ultimately changed the nature of the events to invitation-only fundraisers, so they would not be considered open to the public.<sup>202</sup> Activists in Denver are trying to remedy this debate, and the lack of social marijuana establishments (i.e., cafes) by proposing a ballot measure that would permit marijuana consumption in bars and restaurants.<sup>203</sup>

A similar matter has arisen in Alaska, 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.”<sup>204</sup> 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.<sup>205</sup> The state argues 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.”<sup>206</sup> The state also likens the situation to alcohol “bottle clubs,” which are also prohibited by state statute.

This poses a problem for 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.

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<sup>201</sup> [http://www.denverpost.com/news/ci\\_25723815/denver-asks-colorado-symphony-call-off-bring-your](http://www.denverpost.com/news/ci_25723815/denver-asks-colorado-symphony-call-off-bring-your)

<sup>202</sup> <http://www.thecannabist.co/2014/05/13/colorado-symphony-orchestra-cannabist-concert-series-private-pot-event/11744/>

<sup>203</sup> <http://www.thecannabist.co/2015/06/17/denver-marijuana-public-consumption/36261/>;  
<http://www.thecannabist.co/2015/04/20/pot-club-undercover-denver-police-raids-potus-club-grassroots/33774/>

<sup>204</sup> Mikos at 374.

<sup>205</sup> <http://www.adn.com/article/20150702/state-takes-aim-marijuana-social-clubs>

<sup>206</sup> Id.

Social clubs occupy a wide “gray space” between private residences, where marijuana use is legal, and public facilities like restaurants and bars, where it is not.<sup>207</sup> The legal question is ultimately 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. An additional level of complexity involves crafting rules to distinguish between burning and smoking marijuana, versus vaping, versus eating an edible product. The policy and local governance questions are numerous as well, as social clubs involve zoning, public health, nuisance complaints, and increased risk of DUI.<sup>208</sup>

#### **D. 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 memo, 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.<sup>209</sup> 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 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.

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<sup>207</sup> Mikos at 374

<sup>208</sup> Id.

<sup>209</sup> See *Coats v. Dish Network* (available at: [https://www.courts.state.co.us/userfiles/file/court\\_probation/supreme\\_court/opinions/2013/13sc394.pdf](https://www.courts.state.co.us/userfiles/file/court_probation/supreme_court/opinions/2013/13sc394.pdf))



## E. Banking and Financing

Overwhelmingly, banking institutions will not allow marijuana-related businesses to open accounts because marijuana is still illegal under federal law. Consequently, the marijuana industry largely operates as a cash-only business. This has created logistical and security problems for operators who are forced to use vaults, cameras, and security personnel due to the large amounts of cash that is constantly on-hand.

Additionally, the lack of banking services equates to a lack of capital for the marijuana industry. Banks are the traditional backbone of the small business community.<sup>210</sup> However, banks are refusing to lend money to marijuana-related businesses. As a result, marijuana business operators are relying on short-term loans from individuals, usually with higher interest rates.<sup>211</sup>



The lack of access cannot be solved by the states acting alone because marijuana is illegal under federal law, and because federal law enforcement and federal regulators have the power to punish institutions that do not comply with federal law.<sup>212</sup> Federal agencies have issued guidance for financial institutions and the marijuana industry. The guidance explains that the agencies do not prioritize punishment of banks servicing state-legal marijuana business.<sup>213</sup> However, the guidance is not binding and only reiterates the need for expansive compliance measures.<sup>214</sup> For marijuana banking to flourish, federal financial regulators must ensure that their efforts do not practically prevent banks from servicing the marijuana industry.<sup>215</sup>

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<sup>210</sup> Julie Anderson Hill, *Banks, Marijuana, and Federalism*, Case Western Reserve Law Review, Vol. 65, Issue 3, 601 (2015)(internal citation omitted).

<sup>211</sup> *Id.* at 602.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* (internal citation omitted).

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 605.

## F. Security

Legal marijuana is one of the fastest-growing industries in the United States. The market grew 74 percent last year to \$2.7 billion, up from \$1.5 billion in 2013 and could be worth between \$20 billion and \$35 billion within the next five years, by some estimates.

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.

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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers

**From:** Aimée Kniazowski, City Manager  
Mike Tvenge, Deputy City Manager

**Date:** September 9, 2015

**Agenda Item:** **Item #3 Discussion of Amendment KCC 12.08.030, Obstructions Prohibited**

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**DISCUSSION:** A downtown business, Henry's Restaurant, has requested installing two seating benches to accommodate waiting patrons on the City owned sidewalk in front of the business. Photos of these benches are attached.

Kodiak City Code 12.08.030, Obstructions Prohibited: Except as provided in this section or another provision of this code, no person may cause or maintain an obstruction of a sidewalk. An obstruction is the placement of an object of any kind on, over or adjacent to a sidewalk that in any manner prevents or restricts pedestrian access to or movement upon the sidewalk, and includes without limitation any merchandise, furniture, container, vending machine, sign, equipment, structure, or barricade.

Discussion with the Deputy Manager, Police Chief, Fire Chief, Public Works Director and me agree that this request does not prevent or restrict pedestrian access to or movement upon the sidewalk and clearly allows in excess of 5 feet sidewalk width at every point paralleling the business. The benches are made of non-flammable material and will be permanently anchored to the sidewalk. Both of these issues meet current safety and fire code requirements.

Discussion included creating a revocable permit process to allow for the placement of items within City public property (sidewalks) that is not directly addressed in the City Code. Approvals of such requests could be by administrative action and/or City Council. Further discussion needs to take place with the City Attorney if Council agrees to move this recommendation forward.

Any fee attached to this revocable permit would require a change to the City's Schedule of Fees and Charges.

### **ATTACHMENTS:**

Attachment A: KCC 12.08.030

Attachment B: E-mail from R. LaGrue, dated July 25, 2015

Attachment C: 3 photos of benches

## Chapter 12.08 SIDEWALKS

### Sections

- [12.08.010](#) Debris clearance required
- [12.08.020](#) Snow and ice clearance required
- [12.08.030](#) Obstructions prohibited

For related provisions see Chapter [7.32](#) KCC, Littering.

#### **12.08.010 Debris clearance required**

All owners or occupants of any property fronting on any street or public place shall keep the sidewalk immediately adjacent to said property clear of debris or other materials. [Ord. 816 §4, 1987]

#### **12.08.020 Snow and ice clearance required**

It is unlawful for the owner or occupant of any premises in the city, immediately in front, beside, or behind which is a sidewalk, to permit or allow snow or ice to remain thereon for longer than six hours of daylight after it has ceased snowing. The city manager may have the snow remaining in violation of this section removed immediately and charge the cost of removal to the owner or occupant of the property abutting the sidewalk. [Ord. 816 §4, 1987]

#### **12.08.030 Obstructions prohibited**

Except as provided in this section or another provision of this code, no person may cause or maintain an obstruction of a sidewalk. An obstruction is the placement of an object of any kind on, over or adjacent to a sidewalk that in any manner prevents or restricts pedestrian access to or movement upon the sidewalk, and includes without limitation any merchandise, furniture, container, vending machine, sign, equipment, structure, or barricade. [Ord. 1291 §4, 2011]

**From:** [Henry's Alaska](#)  
**To:** [Marlar, Debra](#)  
**Cc:** [Beaver, Derek](#)  
**Subject:** city side walk 12.08.030  
**Date:** Saturday, July 25, 2015 8:09:22 AM

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Debra Marlar thank you for meeting with me on Friday with no advance notice. Also my thanks to Derek Beaver of the Kodiak police department. He asked that we remove the benches in front of Henry's Great Alaskan Restaurant. He also informed us of the city ordinance regarding obstruction on the city side walks.

The Kodiak city mayor and city clerk met with me on Friday and I also had a phone conversation with Trevor Brown about these benches. I was told that we would need to request approval from the city council. We are making that request now, please.

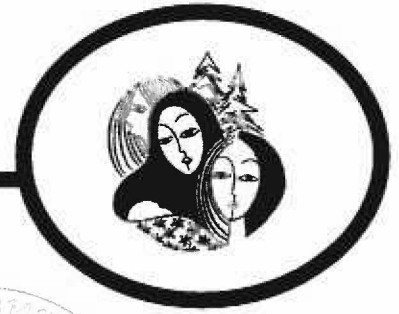
We moved the benches from the main walk way. They are still adjacent to the side walk. We will mark them display only. We would like to request that they be allowed to remain there for 10 days giving the city council members a chance to view them before their vote. Trevor Brown's committee members also requested an opportunity to view them.

Thank you please email or call me at 654-7695 with any questions.

Debra please let me know when we would be scheduled for review by the city council. Thanks again. Ray LeGrue

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# KODIAK WOMEN'S RESOURCE AND CRISIS CENTER



P.O. Box 2122, Kodiak, Alaska 99615

email: kwrcc@gci.net

Phone: (907) 486-6171 Crisis Line: (907) 486-3625 Fax: (907) 486-4264

July 7, 2015

City of Kodiak  
Aimee Kniaziowski  
P O Box 1397  
Kodiak AK 99615



Dear Ms. Kniaziowski,

This letter is being written in regards to our water and sewer bill for our property located at 418 Hillside Drive. We recently purchased this property, located right next door to our first property at 422 Hillside Drive. Our water and sewer bill at 422 Hillside Drive has not been billed to us but has been considered an in-kind contribution. I am hoping that you will do the same for our newly acquired property.

We greatly appreciate your past and current support of our organization. The City has been very helpful to our organization and we are hopeful for any and all continued support that you are able to offer us.

Sincerely,

Mary Lund, Acting Executive Director  
486-6171  
kwrcc@gci.net



| Non-Profits - In Kind Contributions<br>City of Kodiak                    | City Owned<br>Land | City Owned<br>Building | Utility<br>Rate Code | Annual    |           |                   |             |           |                  |            | FY16<br>Budget | Total |  |
|--|--------------------|------------------------|----------------------|-----------|-----------|-------------------|-------------|-----------|------------------|------------|----------------|-------|--|
|  |                    |                        |                      | Sewer     | Water     | Land/Bldg<br>Rent | Electricity | Fuel      | Total<br>In-kind | Grant      |                |       |  |
| <b>Baranof Museum - Kodiak Historical Society</b>                        | yes                | yes                    |                      |           |           |                   |             |           |                  |            |                |       |  |
| 101 E Marine Way<br>New Kodiak Block 16 Lot 2<br>R1220160020             |                    |                        | B1IN                 | 831.00    | 662.76    | 86,592.00         | 3,120.00    | 12,000.00 | 103,205.76       | 93,650.00  | 196,855.76     |       |  |
| <b>Animal Shelter</b>  | yes                | yes                    |                      |           |           |                   |             |           |                  |            |                |       |  |
| 2409 Mill Bay Road<br>US Survey 3469 Unsubdivided Portion<br>R1453000007 |                    |                        | B1IN                 | 831.00    | 994.20    | 24,960.00         |             |           | 26,785.20        | 117,000.00 | 143,785.20     |       |  |
| <b>Discover Kodiak</b>   | yes                | yes                    |                      |           |           |                   |             |           |                  |            |                |       |  |
| 106 Marine Way   |                    |                        | B1IN                 |           |           |                   |             |           | -                | 108,000.00 | 108,000.00     |       |  |
| <b>Kodiak Chamber of Commerce</b>  | yes                | yes                    |                      |           |           |                   |             |           |                  |            |                |       |  |
| 106 Marine Way   |                    |                        | B1IN                 | 1,662.00  | 1,325.52  | 43,008.00         |             |           | 45,995.52        | 7,000.00   | 52,995.52      |       |  |
| <b>Kodiak Head Start</b>   | yes                | yes                    |                      |           |           |                   |             |           |                  |            |                |       |  |
| 419 Hillside<br>USS 2538A Tract B<br>R1443020201                         |                    |                        | B1IN                 | 1,662.00  | 1,325.52  | 43,416.00         |             |           | 46,403.52        |            | 46,403.52      |       |  |
| <b>Brother Francis Shelter</b> (UT#20028-001)                            | yes                | NO                     |                      |           |           |                   |             |           |                  |            |                |       |  |
| 410 Thorseim Street<br>Kodiak Twnst Black 15 Lot 2<br>R1340150020        |                    |                        | B1IN                 | 17,451.00 | 13,917.96 | 62,208.00         |             |           | 93,576.96        | ?          | 93,576.96      |       |  |
| <b>Ak Wing Civil Air Patrol</b> (UT#11013-001)                           | yes {a}            |                        |                      |           |           |                   |             |           |                  |            |                |       |  |
| 2411 Mill Bay Road<br>USS 3469 USub Portion of B/O<br>R1453000010        |                    |                        | B1IN                 | 831.00    | 662.76    | 33,920.76         |             |           | 35,414.52        | -          | 35,414.52      |       |  |
| <b>Senior Citizens of Kodiak</b> (UT#11171-001)                          |                    |                        |                      |           |           |                   |             |           |                  |            |                |       |  |
| 309 Erskine<br>Erskine TR A-1 Senior Center<br>R1440000001               |                    |                        | B1IN                 | 3,324.00  | 2,651.04  |                   |             |           | 5,975.04         | ?          | 5,975.04       |       |  |
| <b>Kodiak Women's Resource and Crisis Center</b> (UT#11947-001)          |                    |                        |                      |           |           |                   |             |           |                  |            |                |       |  |
| 422 Hillside<br>Aleutian Block 14 Lot 13 & 14<br>R10410140140            |                    |                        | B1IN                 | 831.00    | 662.76    |                   |             |           | 1,493.76         | ?          | 1,493.76       |       |  |
| <b>KMXT</b> (UT#12187-001)   |                    |                        |                      |           |           |                   |             |           |                  |            |                |       |  |
| 620 Egan Way<br>2538 A Lot 5A-2A<br>R1443000053                          | USS                |                        | B1IN                 | 831.00    | 662.76    |                   |             |           | 1,493.76         | ?          | 1,493.76       |       |  |

{a} If the building is vacated, then the land and building reverts back to the City

### **Information on Estimated Cost of Utility Waiver for 418 Hillside Drive/KWRCC Building**

Per a request from KWRCC, they are asking permission to waive collection of utility fees for their newly purchased building at 418 Hillside Drive. The following information is an estimate of the cost of this waiver:

The annual cost at the current FY16 utility rates for water and sewer would be \$1,493.76 for this facility. It is the same amount the City currently waives for their original facility at 422 Hillside Drive.

Sewer rates increased by 5% in FY16 and will increase 5% yearly thru FY18. Water rates increased by 8% in FY16. Future increases will depend upon the results of the new cost of service/rate study being completed by CH2M Hill.

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## **Chapter 14.20 MOBILE HOMES**

### Sections

- 14.20.010 Definitions
- 14.20.020 Mobile home construction standards
- 14.20.030 Location—prohibited—exceptions—temporary visitor permit
- 14.20.050 Violation—penalty

#### **14.20.010 Definitions**

“Mobile home” means a structure transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation, when connected to the required utilities.

“Mobile home park” means any area or premises where space for two or more mobile homes is rented, held out for rent, or for which free occupancy is permitted to users for the purpose of securing their trade.

“Recreational vehicle” means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Examples are: travel trailers, camping trailers, truck campers, and motor homes. [Ord. 650, 1982]

#### **14.20.020 Mobile home construction standards**

Any mobile home intended to be placed in a mobile home park within the city of Kodiak must conform to the standards set forth in the Code of Federal Regulations, Title 24, Part 3280, titled “Manufactured Home Construction and Safety Standards.” [Ord. 836 §8, 1988; Ord. 650, 1982]

#### **14.20.030 Location—prohibited—exceptions—temporary visitor permit**

(a) The parking or otherwise locating of mobile homes for any purpose other than storage anywhere within the city limits, outside an existing mobile home park, is prohibited.

(b) The parking or otherwise locating of recreational vehicles for any purpose other than storage anywhere within the city limits, outside an existing mobile home park, is prohibited unless authorized by the terms of a temporary visitor permit or unless the recreational vehicle is located on private property with the permission of the owner of that property and is at least 150 feet from the nearest public road and all property owned by other persons and for a maximum period of not more than 10 weeks in any one calendar year.

(1) The cashier may issue one temporary permit per visitor per six-month period; said permit not to exceed 14 days which shall be subject to a single renewal for a period not to exceed an additional seven days. If the permittee fails to vacate or remove the recreational vehicle at the expiration of the permit term and any renewal period granted, the permittee shall become liable to the city for a civil fine in the amount of \$20.00 per day for each day or portion of a day that the recreational vehicle remains on the premises without authorization plus any surcharge required to be imposed by AS 29.25.072. For the purpose of this section, “visitor” shall mean a person who journeys to the city for the purpose of a short stay and has been in Kodiak for less than 30 days. The temporary visitor permit will be issued only to recreational vehicles bearing a current license plate.

The permit will be issued to the license number except in the case of vehicle-mounted campers, in which case, the permit will be issued to the license number of the vehicle upon which the camper is mounted. It is not permitted under this section to remove a camper from the licensed vehicle to which the temporary permit applies.

(2) The cashier shall only issue temporary visitor permits for private property. If the applicant desires to park a recreational vehicle on any city-owned property or rights-of-way the permit shall be subject to approval by the council.

(3) Opportunity for objection to the issuance of a temporary visitor permit issued under this section will be extended to property owners whose property immediately abuts the private property on which the temporary visitor permit is issued or applied for, and on whose property is situated an occupied dwelling. The objection may be made before issuance or during the term of the permit. Any objections filed under this subsection will be reviewed by the council at the next regular council meeting following the filing of the objection; a decision by the council as to the issuance or continuance of the protested permit will be made at that meeting.

(4) The city council may establish by resolution or motion the fees for each original application for a temporary visitor permit and for the renewal of such permits. [Ord. 1081 §16, 1998; Ord. 938 §6, 1992; Ord. 743, 1985; Ord. 697 §2, 1983; Ord. 662, 1983; Ord. 650, 1982]

#### **14.20.050 Violation—penalty**

The penalty for violation of this chapter shall be as prescribed in KCC 1.12.010. Any person, firm, association, or corporation who violates any provision of this chapter shall remove the mobile home or recreational vehicle within 10 days at the direction of the building official. If the subject mobile home or recreational vehicle is not moved by the owner, occupant, or person in immediate control, the city may authorize impoundment of the mobile home or recreational vehicle. All costs for the above will be borne by the owner. In addition, there shall be assessed against the owner a storage fee as established by resolution or motion of the city council. [Ord. 951 §12, 1993; Ord. 650, 1982]

**The Kodiak City Code is current through Ordinance 1327, passed November 13, 2014.**

Disclaimer: The City Clerk's Office has the official version of the Kodiak City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.city.kodiak.ak.us>  
(<http://www.city.kodiak.ak.us>)  
City Telephone: (907) 486-8636  
Code Publishing Company  
(<http://www.codepublishing.com/>)