

HB 75

(FILE

1)

<TARGET><BILL>HB 75</BILL><SUBJECT>HB 75 (FILE
1)</SUBJECT><COMM>HCRA29</COMM></TARGET>



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

REP. CATHY TILTON
Chairman
State Capitol, Rm. 411
Juneau, AK 99801

Rep. Paul Seaton, Vice-Chair
Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

SECTIONAL ANALYSIS

CSHB 75(CRA)

(29-LS0345\P)

“An Act relating to the regulation of marijuana by municipalities; relating to marijuana; and providing for an effective date.

NON-SUBSTANTIVE

The following sections are non-substantive changes to AS 17.38 that change references of “local government(s)” to “municipality/municipalities” and/or provide grammatical changes to conform to legislative drafting standards.

Section 3 – Page 2, lines 28-31

Section 4 – Page 3, lines 1-4

Section 5 – Page 3, lines 5-11

Section 6 – Page 3, lines 12-19

Section 7 – Page 3, lines 20-25

Section 9 – Page 4, lines 2-9

Section 10 – Page 4, lines 10-19

Section 11 – Page 4, lines 20-25

Section 12 – Page 4, line 26 through Page 5, line 2

Section 13 – Page 5, lines 3-10

Section 14 – Page 5, lines 11-16

Section 15 – Page 5, lines 17-21

Section 18 – Page 8, lines 19-22

SUBSTANTIVE

Section 1 (Page 1, line 4 through Page 2, line 4) – Section 1 amends the definition of “marijuana” in AS 11.71.900(14), Alaska’s criminal code, to conform to the language established in AS 17.38 (ballot measure 2) with one minor exception. “Salt” (Page 1, line 8), included in the ballot measure language was thought to not have a functional meaning and has been deleted.

Section 2 (Page 2, lines 5-27) – When looking through the language as adopted by the ballot measure, municipal attorneys expressed some concern about not having a specific definition of “assisting” found in AS 17.38.020(e). Language found on Page 2, lines 21-27 attempts to provide a specific definition.

Section 8 (Page 3, line 26 through Page 4, line 1) – Section 8 does two important things.

1. First it makes reference to “marijuana clubs” as a new category of marijuana establishments. Municipalities have expressed a desire for the legislature to include and define these types of establishments which would ostensibly provide marijuana users for using marijuana products other than within the home. The purpose for including and defining marijuana clubs is to provide municipalities from approving or disapproving these establishments within their jurisdictions.
2. Section 8 begins to close a loophole, unintended by the initiative sponsors, to provide communities not in an organized city or borough to allow for a local option election in an “established village”. This is taken from Title 4 regarding local option elections for alcohol. As a reminder, because of Ravin v. State (537 P .2d 494), personal possession of small amounts of marijuana cannot be prohibited, so the prohibition in this section is limited to the operation of marijuana establishments.

Section 16 (Page 5, lines 22-31) – As a drafting note, “shall” found on Page 5, line 25 should be “may”. The committee chair has an amendment prepared to make that correction. The intent is that municipalities that have not prohibited marijuana establishments and commercial activities “*may*” create a local advisory board.

More importantly, Section 16 (Page 5, lines 28-31) stipulate that any powers authorized to boroughs may only be adopted on a “nonareawide” basis, meaning that those powers would not extend into cities that lay within a borough’s boundaries.

Section 17 (Page 6, line 1 through Page 8, line 18) – Section 17 sets forth the process by which an established village can hold a local option election for the prohibition or the removal of a prohibition of marijuana establishments and commercial marijuana activities within the boundary of an established village.

**Note: There is a question about the reference to “prohibit of remove” found on Page 8, Line 15. LAA Legal has been contacted for clarification, which has not been received at the time of preparing this sectional.*

Section 19 (Page 8, lines 23-26) – Adds “marijuana club” to the definition of “marijuana establishment.”

Section 20 (Page 8, line 27 through Page 9, line 4) – Revises the definition of “marijuana”, consistent with Section 1 of this bill. The practical effect is that there is only one definition of “marijuana” in statute, thus eliminating potential confusion and legal challenges.

Section 21 (Page 9, lines 5-13) – Provides express definitions of “established village”, “marijuana club” and “public place” as recommended by municipalities. Of note, “public place” follows the definition found in AS 11.81.900.

Section 22 (Page 9, line 14) – Removes “local government” from the definitions section found in AS 17.38.

Section 23 (Page 9, line 15) – Provides an immediate effective date for the provisions of the bill.

Representative Tilton
Chair, House Community and Regional Affairs Committee
State Capitol Room 411
Juneau, Alaska 99801

February 23, 2015

Re: CSHB 75(CRA)

Dear Madam Chair,

I am the Borough Attorney for the Ketchikan Gateway Borough. However, I am writing this letter in my personal capacity, and it does not necessarily represent the official Borough position on these issues. I offer my comments based upon my experience of 27 years as a municipal lawyer, and my familiarity with challenges municipalities face in addressing undesirable conduct where there are similar state provisions at work.

I have had the opportunity to review CS HB 75(CRA) version P. As proposed legislation regarding regulation of marijuana works its way through the legislature, the primary areas of concern I have had relate to preservation of flexibility for municipalities to adopt and enforce their own local ordinances, and preservation of the ability to levy local taxes and fees. In relation to the former, legislation relating to municipal enforcement authority is of concern.

I believe it is important for municipalities to be able to include criminal penalties for certain municipal ordinances. While criminal penalties are not appropriate for all types of local regulations, some violations would be difficult to effectively enforce without that potential. To this end, I suggest that in CSHB 75(CRA) version P, section 9, AS 17.38.110(b) should be amended to clearly allow municipalities to enact criminal as well as civil penalties. Arguably, silence will allow home rule municipalities to still enact criminal penalty ordinances which are not frustrating the purpose of state law, but I recommend that the issue be clarified to explicitly allow criminal penalties.

The general rule for local regulation, where there are State regulations as well, was stated by the Court in Jefferson v. State, 527 P.2d 37,43 (Alaska 1974). There the Court wrote:

" A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities.

The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.”

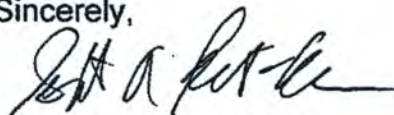
Accordingly, there may be substantial areas for local regulation of these enterprises where those regulations are not in conflict with State statute or regulation. Further, this local regulation should include the ability to prescribe both civil and criminal penalties where appropriate, so long as such ordinances are, as prescribed by AS 17.38.110(b) of the initiative, “not in conflict with” the State statutes or regulations on the same topic.

In a related matter, the provision of SB 30 which proposes amendment to AS 29.35 to add a new section 148 prohibiting municipalities from enforcing an ordinance which is inconsistent with AS 17.38, would unnecessarily restrict the ability of municipalities to adopt local time, place and manner restrictions which are more restrictive than statewide provisions on the subject. For example, if state regulations required marijuana businesses to be 500 feet from a church or school, but a municipality wanted to have the distance be 1000 feet, it should be allowed to do so without risking invalidation because the greater distance is “inconsistent” with the state standard even though it is not in conflict with that standard.

The initiative language prohibits municipal ordinances which are “in conflict” with State provisions. A more desirable approach both for the issue of whether municipal criminal penalties may be included and whether municipal regulation may go beyond the provisions of State statutes or regulations, is to stick to the current rule applied by the Court, which allows local provisions which are more restrictive or extensive so long as the State provisions and the local provisions are not so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.

Thank you for consideration of my comments.

Sincerely,



Scott Brandt-Erichsen
P.O. Box 23448
Ketchikan Alaska 99901

Cc: Representative Ortiz

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE TILTON

TO: CSHB 75(CRA), Draft Version "P"

- 1 Page 5, line 25:
- 2 Delete "shall"
- 3 Insert "may"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 75(CRA), Draft Version "P"

- 1 Page 4, line 7, following "civil":
- 2 Insert "**and criminal**"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 27, 2015

SUBJECT: Requirement under AS 17.38.110 that municipalities adhere to the provisions of AS 44.62 (CSHB 75(CRA); Work Order No. 29-LS0345\P)

TO: Representative Cathy Tilton
Attn: Heath Hilyard

FROM: Megan A. Wallace
Legislative Counsel 

You have asked for an opinion relating to the requirements in AS 17.38.110(d) and (l) that make municipalities subject to AS 44.62 (Administrative Procedure Act).

AS 17.38.110(d) provides that "[a] local government may establish procedures for the issuance, suspension, and revocation of a registration issued by the local government in accordance with (f) of this section or (g) of this section. These procedures shall be subject to all requirements of AS 44.62 (Administrative Procedure Act)." *Id.* AS 17.38.110(l) also provides that "[n]othing in this section shall limit such relief as may be available to an aggrieved party under AS 44.62 (Administrative Procedure Act)." *Id.*

It is unclear under AS 17.38.110(d) and (l) whether a court would require municipalities to comply with all requirements of the Administrative Procedure Act, or whether in establishing procedures "for the issuance, suspension, and revocation of a registration," the municipalities must do so in a manner consistent with the Administrative Procedure Act at the local level. It should be noted, however, that the Administrative Procedure Act establishes the regulatory procedures to be followed by "a state agency," including submission of regulations to the Lt. Governor. *See* AS 44.62.030; AS 44.62.040. "Agency" is defined under AS 44.62.800(1) as:

[A] department, an institution, or a division or other administrative unit of the executive branch of state government authorized or required by law to make regulations, except that 'agency' does not include

(A) a board, a commission, a council, an authority, or a public corporation of the executive branch of state government authorized or required by law to make regulations; or

(B) the Department of Corrections;

Representative Cathy Tilton
February 27, 2015
Page 2

Because a municipality or local government is not a unit of the executive branch, the Administrative Procedure Act does not otherwise apply to municipalities, and it is unclear whether a municipality could as a practical matter meet all of the procedures set in place for state agencies. For this reason, I recommend that AS 17.38.110(d) and (l) be amended to clarify that municipalities are not required to strictly follow the Administrative Procedure Act but must establish local procedures "for the issuance, suspension, and revocation of a registration" in a manner that is consistent with the Administrative Procedure Act.¹

Usually, municipalities act by ordinance. It would seem to me that adoption of an ordinance would be consistent with AS 44.62, if not providing greater opportunity for public comment and involvement than is provided by AS 44.62.²

You have also asked about the difference between AS 17.38.250(a) and AS 17.38.250(c), and why subsection (c) does not allow for participation of a local government. In this regard, AS 17.38.250(a) allows a local government to establish the perimeter of an established village, but AS 17.38.250(c) allows the board to reestablish a perimeter if the board determines that the perimeter established by the local government under AS 17.38.250(a) does not accurately reflect the perimeter of the established village. Therefore, it appears that AS 17.38.250(c) does not provide for participation of a local government, because the board has determined that the perimeter established by the local government under AS 17.38.250(a) was not accurate.

If you have any questions, or if I can be of further assistance, please advise.

MAW:lnd
15-154.lnd

¹ In some instances, however, state law can preempt municipal procedures. See *Municipality of Anchorage v. Repasky*, 34 P.3d 302, 311 (Alaska 2001) ("State law can also prohibit a municipality from exercising authority by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. In general, for state law to preempt local authority, it is not enough for state law to occupy the field. Rather, if the legislature wishes to preempt an entire field, [it] must so state."); see also *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974) ("The constitution's authors did not intend to create 'city states with mini-legislature.' They wrote into Art. X, sec. 11 the limitation of municipal authority not prohibited by law or charter".).

² Some municipalities do provide for the adoption of regulations, although I am unable to comment upon whether any particular municipal regulation process might be consistent with AS 44.62.

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MEMORANDUM

February 27, 2015

SUBJECT: Cap on Number of Plants per Residence (CSHB 75(CRA));
Work Order No. 29-LS0345(I)

TO: Representative Cathy Tilton
Attn: Heath Hilyard

FROM: Emily Nauman 
Legislative Counsel

You requested that a provision be added to CSHB 75(CRA) limiting the number of marijuana plants persons may possess in a residence. I have inserted the provision in the bill, however, it will likely be subject to equal protection and privacy challenges. This memo also notes one other issue, directing a fee to be disbursed to a municipality without an appropriation is unconstitutional.

Equal Protection

A household limit on marijuana plants may violate the equal protection provisions of the state and federal constitutions. You requested that, no matter the number of adults in a residence, the number of plants allowed in a residence be capped at 12. The consequence of this is that an adult living in a residence with more than one other adult will not be allowed to possess the same number of plants as an adult living on his or her own or with just one other person. If a court finds that the two groups of adults are similarly situated but treated differently, equal protection principles apply and the state must demonstrate that it has a legitimate or important interest for the resulting disparate treatment and that the law is linked to that interest. The Alaska Supreme Court has adopted a flexible "sliding scale" test for reviewing equal protection claims. First, the Court determines what weight should be afforded the constitutional interest impaired by the challenged enactment. Second, the Court examines the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest. Finally, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken.¹ Although related to a privacy concern, discussed below, the Court in *Ravin v. State*,² held that possession of marijuana was a fundamental constitutional right

¹ *Ross v. State*, 286 P.3d 495, 498 - 499 (Alaska 2012).

² 537 P.2d 494 (Alaska 1975).

and therefore that a state law must be shown to be "necessary, and not merely rationally related, to the accomplishment of a permissible state policy."³ A court would likely use a similar analysis for an equal protection challenge to this bill draft.

It is worth noting that a court may be persuaded by the analysis in *Nelson v. State* for constructive possession.⁴ Constructive possession in *Nelson* is described by the Court as "knowingly having the power and intention at a given time to exercise dominion and control over the property."⁵ In other words, the existing restriction in AS 17.38.020(2) may only allow a residence to have six plants to the extent that those six plants are in an area where they may be accessed by any adult in the home. Note that *Nelson*, and constructive possession cases in general, usually apply to crimes of theft. That is very different from the case here, since possession of at least some marijuana plants is constitutionally protected.⁶ If the Court were to accept a constructive possession analysis, your change would not be necessary. Alternatively, the restriction may not be necessary at all if you wish to restrict plant possession by residence, rather than by person. As discussed below, even that tactic may be problematic, however.

Privacy

Limiting the number of plants an adult has in their home may violate the privacy provisions of the Constitution of the State of Alaska⁷ and as expounded in *Ravin v. State*.⁸ In *Ravin*, the Court held:

[C]itizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of

³ *Id.*, at 497 (footnotes and citations omitted).

⁴ 628 P.2d 884 (Alaska 1981).

⁵ *Id.*, at 889.

⁶ *Id.*, See also Scott Woodham, *Why does Alaska count 6 pot plants per household, not per person?* Alaska Dispatch News, February 26, 2015. Enclosed.

⁷ Article I, sec. 22, Constitution of the State of Alaska, provides:

SECTION 22. Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

⁸ 537 P.2d 494 (Alaska 1975).

marijuana in the home is supportable by achievement of a legitimate state interest.^{9]}

The Court held that possession at home of amounts of marijuana indicative of an intent to sell was not protected under the privacy provision of the Constitution of the State of Alaska, however, that reasoning was not sufficient to justify a general law that criminalized all possession of marijuana in all contexts.¹⁰ Related to the amount of marijuana necessary to trigger an intent to sell finding, the Alaska Court of Appeals, in *Noy v. State*¹¹ ruled that possession of marijuana in an amount greater than four ounces is not personal use possession. To help protect against a successful privacy challenge, you may wish to develop a record that this change in your bill is designed to prevent adults from growing marijuana in a home in amounts indicative of an intent to sell.

Dedication of Funds without Appropriation

AS 17.38.100(c) requires that half of the registration application fee be forwarded to the local regulatory authority for the municipality in which the applicant desires to operate the marijuana establishment. An appropriation is necessary to transfer these funds to a municipality.¹² It may be possible to correct this problem by instead directing the state to collect the application fees on behalf of the municipality.

If I may be of further assistance, please advise.

ELN:lem
15-115.lem

Enclosures

⁹ *Id.*, at 504.

¹⁰ *Id.*, 511.

¹¹ 80 P.3d 255 (Alaska App. 2003).

¹² Art. IX, sec. 13, Constitution of the State of Alaska.

HOME MANUFACTURE OF ALCOHOLIC BEVERAGES STATE STATUTES



Updated July 9, 2013

In 1978, Congress enacted Public Law 95-458 (H.R. 1337), amending the Internal Revenue Code to allow any adult to produce beer, without the payment of tax, for personal or family use. The beer produced per household may not exceed: (1) 200 gallons per calendar year if there are two or

more adults residing in the household, or (2) 100 gallons per calendar year if there is only one adult residing in the household. Under the 27 C.F.R. §25.206, homemade beer for personal or family use may be removed from the premises where made for organized affairs, exhibitions or competitions such as homemaker's contests, tastings or judging. Under 27 C.F.R. 24.75, adults may produce wine for personal or family use in the same amount as allowed for beer.

In the 2013 legislative session, the remaining two states—Alabama and Mississippi—enacted legislation allowing home-brewed beer.

The chart below summarizes the state statutory provisions that allow for the home manufacture of alcoholic beverages, including beer, cider, mead and wine. Twenty-three states—Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Hampshire, Oklahoma, Oregon, Pennsylvania, Utah, Vermont, Virginia, Washington and Wisconsin—allow home-made alcoholic beverages to be transported to tasting competitions and judgments.

NOTE: Please note the summaries should be used for general informational purposes and are not intended as a legal reference. NCSL is unable to provide assistance, give advice or answer questions regarding individual cases. If you have questions regarding home-made alcoholic beverages, please contact an attorney in your state or your state attorney general.

AL | AK | AZ | AR | CA | CO | CT | DE | DC | FL | GA | GU | HI | ID | IL | IN | IA | KS | KY | LA | ME | MD | MA | MI | MN | MS | MO | MT | NE | NV | NH | NJ | NM | NY | NC | ND | CNMI | OH | OK | OR | PA | PR | RI | SC | SD | TN | TX | UT | VA | VI | WA | WV | WI | WY

NCSL Resources

[Dram Shop Liability State Statutes](#)

[Open Container and Consumption State Statutes](#)

NCSL Contact

Heather Morton, Denver, 303-364-7700

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 - [Commerce](#)
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STATES

Alabama

STATUTORY PROVISION

Ala. Code §28-4-3

The laws against possession, transportation or delivery of prohibited liquors shall not apply to the possession of wine or cordial made from grapes or other fruit when the grapes or other fruit are grown by the person making the same for his own domestic use upon his own premises in this state and when such person keeps such wine or cordial for his own domestic use on his own premises in any quantity not exceeding five gallons for one family in 12 months.

2013 Act 204

(a) Notwithstanding any provisions to the contrary, a person who has not been convicted of a felony in Alabama or any other state or federal jurisdiction, and who is not prohibited by §28-1-5, Code of Alabama 1975, from producing, consuming, possessing, or transporting alcoholic beverages due to age, may produce at his or her legal residence beer, mead, cider, and table wine, as those terms are defined in §28-3-1, Code of Alabama 1975, for personal use, in the amounts specified in this act, without payment of taxes or fees and without obtaining a license. The aggregate amount of the beer, mead, cider, and table wine permitted to be produced under this act, with respect to any legal residence, shall not exceed 15 gallons for each quarter of a calendar year. Further, there shall not be in any legal residence at any one time more than an aggregate amount of 15 gallons of beer, mead, cider, and table wine which has been produced under the authority of this act.

(b) Beer, mead, cider, or table wine produced under this act may not be sold or offered for sale.

(c) Beer, mead, cider, or table wine produced under this act may not be removed from the legal residence where it was produced, except in quantities no larger than 10 gallons, aggregate, for any one event, and to be transported for personal use at organized events of homebrew competitions and judgments licensed by the Alcoholic Beverage Control Board as a special events retail license under §28-3A-20, Code of Alabama 1975, provided that the license will not allow the purchase or sale of any alcoholic beverages.

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provided that the licensee will not allow the purchase or sale of any alcoholic beverages when that license is used for this purpose. Organized events involving beer, mead, cider, or table wine produced for personal use may not be held on the premises of entities otherwise licensed under Title 28, Code of Alabama 1975.

(d) Nothing in this act permits the production of distilled liquors, for personal use or otherwise, or the use of distilled liquors or products in the production of beer, mead, cider, or table wine provided in this section.

(e) It shall be unlawful for any person less than 21 years of age to attempt to purchase, consume, possess, or transport beer, mead, cider, or table wine produced for personal use.

(f) It shall be unlawful for any person less than 21 years of age to attempt to purchase, possess, or transport any apparatus or equipment used to produce beer, mead, cider, or table wine. It shall be unlawful for any person, partnership, corporation, or other legal entity to sell, furnish, give away, or provide to any person less than 21 years of age any apparatus or equipment used to produce beer, mead, cider, or table wine.

(g) Nothing in this section permits the production of beer, mead, cider, or table wine in a dry municipality, as defined in Chapter 3 of Title 28, Code of Alabama 1975. Further, with the exception of wet municipalities, as defined in Chapter 3 of Title 28, Code of Alabama 1975, nothing in this section permits the production of beer, mead, cider, or table wine in a dry county as defined in Chapter 3 of Title 28, Code of Alabama 1975.

(h) The definitions contained in §28-3-1 of the Code of Alabama 1975, shall apply to this act.

(i) Any violation of this section shall be a Class B misdemeanor.

Alaska

Alaska Stat. §04.21.015

(a) Except as provided in (b) of this section, the provisions of this title do not apply to the private manufacture of alcoholic beverages.

(b) This section does not apply to AS 04.16.050 , 04.16.051, 04.16.080; AS 04.21.010 , 04.21.020; alcoholic beverages manufactured in a quantity that exceeds the limit imposed on private manufacture under federal law; or an area that has adopted a local option law under AS 04.11.491.

Arizona

Ariz. Rev. Stat. Ann. §4-226

The provisions of this title do not apply to:

3. Ethyl alcohol intended for use or used for the following purposes:

(b) Use by those authorized to procure spirituous liquor or ethyl alcohol tax-free, as provided by the acts of Congress and regulations promulgated thereunder.

Arkansas

Ark. Stat. Ann. §3-5-205

(f) (1) However, any person in this state may manufacture home-brewed beer or home-manufactured wine:

(A) Upon his or her own premises free from the license fees and taxes provided in this subchapter;

(B) For consumption by the manufacturer and his or her family and guests, but not for sale; and

(C) In quantities per calendar year not to exceed: (i) 200 gallons if there are two or more adults in the household; or (ii) 100 gallons if there is only one adult in the household.

(2) While the manufacture of beer or wine is declared to be a privilege, the home manufacture of beer or wine in quantities not to exceed 200 gallons per calendar year shall be exempted from §§3-4-101, 3-4-602, 3-5-205(a)-(e), 3-5-206, and 3-5-211.

Ark. Stat. Ann. §3-5-207

(b) No permit shall be required for the home manufacture of beer or wine in quantities not to exceed 200 gallons per calendar year under §§3-4-101, 3-4-602, 3-5-206, or 3-5-211 as may otherwise be required of other manufacturers.

California

Cal. Business and Professions Code §23356.2

(a) No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over 21 years of age. The aggregate amount of beer with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household.

(b) No license or permit shall be required for the manufacture of wine for personal or family use, and not for sale, by a person over 21 years of age. The aggregate amount of wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household.

(c) Any beer manufactured pursuant to this section may be removed from the premises where manufactured for use in competition at organized affairs, exhibitions, or competitions, including homemakers' contests, tastings, or judgments.

(d) Any wine made pursuant to this section may be removed from the premises where made for personal or family use, including use at organized affairs, exhibitions, or competitions, such as homemakers' contests, tastings, or judgments. Wine used under this section shall not be sold or offered for sale.

(e) Except as provided herein, nothing in this section authorizes any activity in violation of

How Much Cannabis Can I Yield Per Plant?

BLOGJAN 21, 2014 COMMENTS (NO COMMENTS)



One of the most popular questions regarding marijuana is “How much can I expect to get?” or “How much usable marijuana will a single plant provide?” There are no simple answers to this question as each situation depends on a number of variables.

Many people take up growing weed and they have a variety of reasons for doing so. In every case, you want to get the most out of your crop. Whether you’re growing for medical reasons or you just want to make a little money on the side, the overall yield is a top priority for all growers. Download my [free marijuana grow bible at this link](#) for more information about growing marijuana.

Increase cannabis yield per plant indoors

Lights are of the utmost importance when you’re growing indoors. Experienced growers can produce about a gram of marijuana per watt of light (1 gram = 0,035 oz). So, a 400-watt HPS lamp can potentially translate to 400 grams or 14 oz of usable cannabis. Likewise, a grow room with 1200 watts of light will produce 1.2 kilograms or 42 oz of cannabis. Having the right equipment, adequate nutrient solutions, beneficial air quality, and other valuable factors is important for producing the highest yields. Making sure the plants have space to grow is also key. Beginners can expect to yield grass as follows:

Marijuana Yields in Imperial measurements

- An average of around 1.5 to 2.0 oz (3.5 oz for advanced growers) with 200-watt CFL lamps in a grow cabinet that measures 3.5 x 1.5 x 6.5 ft.
- An average of around 3.0 to 5.0 oz (9.0 oz for advanced growers) with a 250-watt HPS lamp in a grow cabinet that measures 3.5 x 1.5 x 6.5 ft.
- An average of around 4.5 to 9.0 oz (14 oz for advanced growers) with a 400-watt HPS lamp in a grow room that measures 3.5 x 3.5 x 7 ft.
- An average of around 5.0 to 10 oz (21 for advanced growers) with a 600-watt HPS lamp in a grow room that measures 4 x 4 x 8 ft.
- An average of around 9.0 to 18 oz (36 for advanced growers) with a 1000-watt HPS lamp in a grow room that measures 5 x 5 x 8 ft.

Marijuana Yields in Metric measurements

- An average of around 40 to 60 grams (100 for advanced growers) with 200-watt CFL lamps in a grow cabinet that measures 1 x 0.5 x 2 m
- An average of around 80 to 150 grams (250 for advanced growers) with a 250-watt HPS lamp in a grow cabinet that measures 1 x 0.5 x 2 m
- An average of around 100 to 250 grams (400 for advanced growers) with a 400-watt HPS lamp in a grow room that measures 1 x 1 x 2.5 m,
- An average of around 150 to 300 grams (600 for advanced growers) with a 600-watt HPS lamp in a grow room that measures 1.2 x 1.2 x 2.5 m.
- An average of around 250 to 500 grams (1000 for advanced growers) with a 1000-watt HPS lamp in a grow room that measures 1.5 x 1.5 x 2.5 m.

Individual Cannabis Plant Yield

Indoor growth doesn't bring with it a lot of certainty in terms of yield per plant. If you have only four plants per lamp, then you'll yield much more than you would with total of sixteen plants for every lamp. You should consider these things prior to choosing how many plants you want to grow:

- If you've only got 4 plants, your crop will be ruined if even one gets a disease or dies
- Vegetative growth lasts longer with only four plants. You should want to force flowering when the tips of the leaves are touching. If there are more plants, the leaves touch quicker.
- Four plants are easier to manage than sixteen.
- If someone catches you, you only have four plants to your name.

Either way, growing four plants using a 600-watt HPS lamp could produce about 150 grams or 5.0 oz per plant. Sixteen plants that are grown under a 600-watt HPS lamp could produce about 37.5 grams or 1.3 oz of marijuana per plant.

Increase marijuana plant yield outdoors

Under perfect, outdoor conditions, you can expect yields to extend to 500 grams or 17.5 oz per plant. Space is a necessity (at least two meters) along with water, nutrients, and a dearth of pests and diseases. If you use containers, they should be at least 50 liters or 15 gallons in size. It's a good idea to germinate the seeds early on to allow the plants time to grow large. It's best to germinate indoors where you can manage the humidity and the temperature for the seedlings. Again, 500 grams (17.5 oz) per plant is possible if everything goes as planned.

Aside from an adequate amount of sun, water, and nutrient quality, the actual genetics of the plant play a very important role. Seeds are vital and you need to have some exceptional seeds at your disposal. You can look through our [cannabis seed shop](#) to find the a strain that's right for you. It all starts with genetics....

100 questions about legal marijuana: Your go-to source for Colorado info

PUBLISHED: JUL 2, 2014, 8:50 AM

By John Ingold, *The Denver Post*, and Susan Squibb, *The Cannabist*

Possession regs: limits on flowers, whole plants, home growing, gun ownership

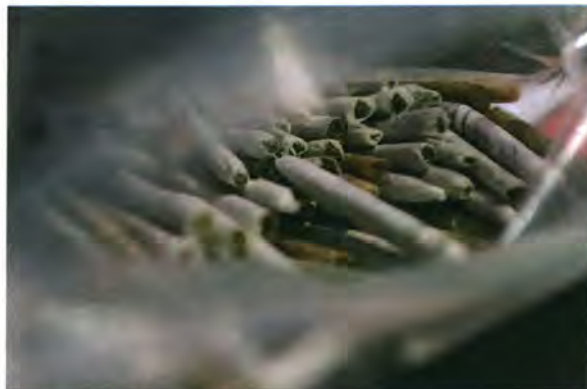
Q: With all these caveats, I can legally possess an ounce of dried marijuana flowers. How much is that in practical terms?

A: It's a lot. Researchers have calculated that the average joint has slightly less than a half gram of marijuana. (Yes, this is actually something that people with Ph.D.s did.) An ounce is slightly more than 28 grams. So one ounce will get you close to 60 joints. In alcohol terms, it's a keg of pot.

Q: Can I grow my own marijuana at home?

A: You can. Colorado law allows people 21 and older to grow up to six plants, provided it's done in an "enclosed, locked space." Some cities have limited the number of plants that can be grown in a single house — Denver's cap is 12 — and some cities have imposed other zoning or code restrictions on home-growing.

Even without those hurdles, experts say that, just because it's called weed, don't expect marijuana to grow as easily as one at home. That difficulty is the main reason why the recreational marijuana stores are expected to be so popular.



(Denver Post file)

KEG SIZES AND GALLONS PER SIZE

Size (US gal)	Size(liters)	No. of 12 fl oz drinks	No. of 16 fl oz drinks	No. of 20 fl oz drinks	Weight of full keg (lb)	Also known as
1.32	5	14	10.6	8.5	—	Mini Keg / Bubba (single-use/recyclable)
3.875	14.67	41.3	31	24.8	—	Eighth Barrel
5	18.9	53	40	32	55–60	Soda syrup / Corny Keg / Home Brew
5.16	19.8	56	42	33	58–60	Sixth Barrel / Torpedo Keg / Sixel
6.6	25	70	50.25	42	—	"Half Barrel" (Europe)
7.75	29.3	82	62	49	90	Quarter Barrel / Pony Keg
13.2	50	140	105	84	—	Import Keg (standard European "Barrel")
15.5	58.66	165	124	99	140–170	Half Barrel / Full Keg

Source: Wikipedia (<http://en.wikipedia.org/wiki/Keg>)



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

REP. CATHY TILTON
Chairman
State Capitol, Rm. 411
Juneau, AK 99801

Rep. Paul Seaton, Vice-Chair
Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

SECTIONAL ANALYSIS

CSHB 75(CRA)

(29-LS0345\I)

“An Act relating to the regulation of marijuana by municipalities; relating to marijuana; and providing for an effective date.

NON-SUBSTANTIVE

The following sections are non-substantive changes to AS 17.38 that change references of “local government(s)” to “municipality/municipalities” and/or provide grammatical changes to conform to legislative drafting standards.

Section 3 – Page 2, line 30 through Page 3, line 2

Section 4 – Page 3, lines 3-6

Section 6 – Page 3, lines 16-23

Section 9 – Page 5, lines 23-31

Section 10 – Page 6, lines 1-10

Section 11 – Page 6, lines 11-16

Section 12 – Page 6, lines 17-24

Section 13 – Page 6, line 25 through Page 7, line 1

Section 14 – Page 7, lines 2-7

Section 15 – Page 7, lines 8-12

Section 18 – Page 8, lines 19-22

SUBSTANTIVE

Section 1 (Page 1, line 4 through Page 2, line 4) – Section 1 amends the definition of “marijuana” in AS 11.71.900(14), Alaska’s criminal code, to conform to the language established in AS 17.38 (ballot measure 2) with one minor exception. “Salt” (Page 1, line 8), included in the ballot measure language was thought to not have a functional meaning and has been deleted.

Section 2 (Page 2, lines 5-29) – Section 2 does two things.

1. This section provides for a household maximum plant limit of “not more than 12 marijuana plants, with six or fewer being mature” where two or more adults reside.
2. When looking through the language as adopted by the ballot measure, municipal attorneys expressed some concern about not having a specific definition of “assisting” found in AS 17.38.020(e). Language found on Page 2, lines 21-27 attempts to provide a specific definition.

Section 5 (Page 3, Lines 7-15) – The section now contains language conforming to Title 4 provisions regarding the Board’s (currently ABC or a Marijuana Control Board, if adopted) notification requirements to municipalities when issuing registrations for commercial marijuana establishments.

Section 7 (Page 3, Line 24 – Page 5, Line 15) – This contains substantially similar language to what appears in Title 4 providing for a notification and protest process for municipalities regarding issuance of registrations for commercial marijuana establishments within its boundaries.

Section 8 (Page 5, lines 16-22) – Section 8 does two important things.

1. First it makes reference to “marijuana clubs” as a new category of marijuana establishments. Municipalities have expressed a desire for the legislature to include and define these types of establishments which would ostensibly provide marijuana users for using marijuana products other than within the home. The purpose for including and defining marijuana clubs is to provide municipalities from approving or disapproving these establishments within their jurisdictions.
2. Section 8 begins to close a loophole, unintended by the initiative sponsors, to provide communities not in an organized city or borough to allow for a local option election in an “established village”. This is taken from Title 4 regarding local option elections for alcohol. As a reminder, because of Ravin v. State (537 P .2d 494),

personal possession of small amounts of marijuana cannot be prohibited, so the prohibition in this section is limited to the operation of marijuana establishments.

Section 16 (Page 7, lines 13-22) – Section 16 (Page 7, lines 19-22) stipulates that any powers authorized to boroughs may only be adopted on a “nonareawide” basis, meaning that those powers would not extend into cities that lay within a borough’s boundaries.

Section 17 (Page 7, line 23 through Page 10, line 9) – Section 17 sets forth the process by which an established village can hold a local option election for the prohibition or the removal of a prohibition of marijuana establishments and commercial marijuana activities within the boundary of an established village.

Section 19 (Page 10, lines 14-17) – Adds “marijuana club” to the definition of “marijuana establishment.”

Section 20 (Page 10, lines 18-26) – Revises the definition of “marijuana”, consistent with Section 1 of this bill. The practical effect is that there is only one definition of “marijuana” in statute, thus eliminating potential confusion and legal challenges.

Section 21 (Page 10, line 27 through Page 11, line 5) – Provides express definitions of “established village”, “marijuana club” and “public place” as recommended by municipalities. It also provides a definition of “residence” as necessitated by the plant limit found in Section 2. Of note, “public place” follows the definition found in AS 11.81.900.

Section 22 (Page 11, line 6) – Removes “local government” from the definitions section found in AS 17.38.

Section 23 (Page 11, line 7) – Provides an immediate effective date for the provisions of the bill.



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

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Chairman
State Capitol, Rm. 411
Juneau, AK 99801

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Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

EXPLANATION OF CHANGES

CSHB 75(CRA)

(29-LS0345\P & 29-LS0345\I)

“An Act relating to the regulation of marijuana by municipalities; relating to marijuana; and providing for an effective date.

Section 2 (Page 2, lines 5-29) – This section provides for a household maximum plant limit of “not more than 12 marijuana plants, with six or fewer being mature” where two or more adults reside. ***This is new language.***

Section 5 (Page 3, Lines 7-15) – The section now contains language conforming to Title 4 provisions regarding the Board’s (currently ABC or a Marijuana Control Board, if adopted) notification requirements to municipalities when issuing registrations for commercial marijuana establishments. ***This is new language.***

Section 7 (Page 3, Line 24 – Page 5, Line 15) – This contains substantially similar language to what appears in Title 4 providing for a notification and protest process for municipalities regarding issuance of registrations for commercial marijuana establishments within its boundaries. ***This is new language.***

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSHB 75(CRA), Draft Version "P"

1 Page 9, line 13:

2 Delete all material and insert:

3 "(17) "public place" means a place to which the public or a substantial
4 group of persons has access and includes highways, transportation facilities, schools,
5 places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies,
6 and other portions of apartment houses and hotels not constituting rooms or
7 apartments designed for actual residence; "public place" does not include a marijuana
8 club."

LEGAL SERVICES

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 25, 2015

SUBJECT: Definition of "public place"
(CSHB 75(CRA); Work Order No. 29-LS0345VP)

TO: Representative Paul Seaton
Attn: Jenny Martin

FROM: Megan A. Wallace
Legislative Counsel *MAW*

You have asked whether a cannabis club with a membership is excluded from the "public place" definition in AS 11.81.900. You have also asked if it were a paid membership, whether that would restrict entry enough to make it fall outside the definition of "public place."

AS 11.81.900(53) defines "public place" as "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." It does not appear that Alaska has ever decided whether a private club is a "public place."¹ Accordingly, there is no way to say for certain whether a cannabis club would be excluded from the definition of "public place." It is my opinion, however, that if there were no membership fee, then the club would not be "private" and would likely be deemed a "public place." Even if a membership fee were required, a strong argument could be made that a cannabis club is analogous to "places of amusement or business" and would fall within the definition of "public place," since it would be a place where "a substantial group of persons has access."

If you have any questions, or if I can be of further assistance, please advise.

MAW:lem
15-118.lem

¹ Other states have considered this issue for different purposes. *See, e.g., Long v. State*, 666 N.E.2d 1258, 1261 (Ind. Ct. App. 1996) ("[A] private residence or private club is not a public place" for purposes of public indecency).

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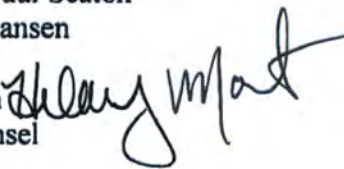
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2015

SUBJECT: Marijuana clubs (Work Order No. 29-LS0345\P.6)

TO: Representative Paul Seaton
Attn: Taneeka Hansen

FROM: Hilary V. Martin 
Legislative Counsel

Enclosed is the amendment you requested.

I added the language regarding paid memberships to the definition of "marijuana club." This way, a marijuana club can only have paid memberships. Adding the language to the definition of "public place" would mean that a marijuana club with paid memberships could allow consumption on the premises, but a marijuana club with free memberships could not allow consumption on the premises.

If I may be of further assistance, please advise.

HVM:lnd
15-165.lnd

Enclosure

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSHB 75(CRA), Draft Version "P"

- 1 Page 9, line 11, following "by":
- 2 Insert "paying"

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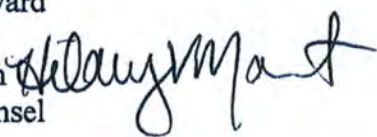
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 2, 2015

SUBJECT: Municipal criminal penalties
(CSHB 75(CRA); Work Order No. 29-LS0345\P.1)

TO: Representative Cathy Tilton
Attn: Heath Hilyard

FROM: Hilary V. Martin 
Legislative Counsel

You have asked about the impact of amendment 29-LS0345\P.1 on HB 75, and generally about the power of municipalities to impose criminal penalties. The answer depends on the interpretation given to the civil authority granted to municipalities in the initiative and may depend on whether the municipality is a home rule municipality.

Initiative

The initiative states:

(b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner, and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.^[1]

The first sentence of the subsection is unclear. It states that a municipality may enact ordinances or regulations not in conflict with the chapter or regulations adopted under the chapter governing the time, place, manner, and number of marijuana establishment regulations. One potential reading of this language is as a limitation on the power of a municipality to enact ordinances regarding marijuana -- that a municipality may only enact ordinances governing the time, place, manner, and number of marijuana establishments -- and that a municipality is unable to enact ordinances regarding any other subject contained in the initiative.

¹ AS 17.33.110(b). Note that the initiative uses the term "local government" throughout, which is defined in AS 17.38.900(4) as "both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities." The CS changes "local government" to "municipality" throughout, and the memo will similarly refer to "municipalities."

Another plausible reading of the sentence is that a municipality may adopt regulations regarding time, place, manner, and number of marijuana establishments, but those ordinances may not conflict with the chapter or regulations adopted under the chapter. This interpretation would not limit a municipality from enacting other ordinances regarding marijuana, but any ordinances governing the time, place, manner, and number of marijuana establishments may not conflict with the chapter or regulations adopted under the chapter.

The second sentence of this subsection states that a municipality may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such municipality. Amendment P.1 adds the words "and criminal" following "civil" to this sentence. It is possible that the intent of this language is to prevent a municipality from imposing criminal penalties on violations of the ordinances, as only civil penalties are mentioned. However, the language does not explicitly limit a municipality from enacting only civil penalties for ordinances.

Municipalities are granted wide powers by art. X, sec. 1 of the Constitution of the State of Alaska, which provides:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Statutory authority granted municipalities echo the constitutional purpose and construction. AS 29.35.400 provides:

A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

AS 29.35.410 provides:

Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title. [Emphasis added.]

AS 29.35.410 provides:

A specific example in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

A municipality also has general authority to enact and enforce ordinances adopted by it, including setting penalties for those ordinances under AS 29.35.010(7).

The fact that a municipality has otherwise broad authority in addition to that expressly provided by the initiative suggests that the municipality can continue to exercise its general authority. This may be particularly true for home rule municipalities which may generally exercise any power not expressly prohibited by the state and general law municipalities that may exercise powers specified in law and powers not otherwise prohibited by law if properly acquired.

Because the subsection is unclear as to whether it is a limitation on the power of municipalities to otherwise enact ordinances, it may be advisable to amend this subsection and clarify the scope of municipal power regarding ordinances related to marijuana. The legislature is authorized to amend initiatives so long as the amendments do not constitute a repeal of the initiative.²

Alcohol

You have also asked about municipal control over alcohol. Under AS 29.35.080(a), a municipality "may regulate the possession, barter, sale, importation, and consumption of alcoholic beverages under AS 04.11.480 - 04.11.509 and AS 04.21.010." These statutes allow a local governing body to protest the issuance, renewal, relocation, or transfer to another person of an alcohol license,³ create the local option system,⁴ and authorizes a municipality to adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and to ban the possession of alcoholic beverages.⁵ AS 04.21.010 also states that an ordinance adopted under that section "may not be inconsistent with this title or regulations adopted under the title."

HVM:lem
15-130.lem

² Article XI, sec. 6, Constitution of the State of Alaska; *Warren v. Thomas*, 586 P.2d 400, 402 (Alaska 1977).

³ AS 04.11.480.

⁴ AS 04.11.491 - AS 04.11.509.

⁵ AS 04.21.010.

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Juneau, Alaska 99801-1182
Deliveries to 129 8th St. Rm. 329

MEMORANDUM

February 26, 2015

SUBJECT: Grounds for revocation of a marijuana establishment's registration
(Work Order No. 29-LS0638'A)

TO: Representative Paul Seaton
Attn: Taneeka Hansen

FROM: Alpheus Bullard *ALB*
Legislative Counsel

Ms. Hansen asked, under the provisions of Ballot Measure No. 2 (the initiative), whether the only grounds permitted for revocation of a marijuana establishment's registration to operate was a failure to pay taxes under the initiative's sec. 43.61.030.

Under the initiative, subject to the adoption of regulations by the Alcohol Beverage Control Board (board), a marijuana establishment's registration to operate may be revoked on grounds other than failing to pay taxes.

Section 17.38.090 of the initiative directs the board to adopt regulations that include "procedures for the . . . revocation of a registration to operate a marijuana establishment[.]" This authority to adopt regulations relating to the revocation of a marijuana establishment's registration to operate is not limited by the specific language of the initiative's sec. 41.61.030(b). AS 17.38.110 also allows a local government to enact ordinances and regulations if the board does not. Under AS 17.38.110(d) a local government may establish procedures for revocation of a registration that it issued. Local governments may enact ordinances and regulations and may issue registrations if the board fails to act. Sec. 17.38.110(f).

Section 41.61.030(b) provides that a marijuana cultivation facility¹ that fails to pay taxes to the state *may* have its registration to operate "revoked in accordance with procedures established under [sec.] 17.38.090(a)(1)." This subsection does not limit the board's authority, or a local government's authority, to adopt regulations that provide for marijuana establishments' registrations to be revoked for other causes.

If you have further questions, please do not hesitate to contact me.

ALB:lem
15-124.lem

¹ Under sec. 17.38.900(9) of the initiative, "marijuana establishment" includes a marijuana cultivation facility.



March 3, 2015

Regarding:	HB 75
Position:	Neutral, Recommend amendments

Alaska House Community & Regional Affairs Committee
Attention Representative Cathy Tilton, Chair
Pouch V
State Capitol
Juneau, Alaska 99801

Cc: Committee members

Dear Chair Tilton and members of the committee:

We're grateful for this committee's diligence in working with local governments and municipalities to clarify their role in implementing Measure 2. We appreciate the committee and legislative staff's desire to respect the will of the voters and your responsiveness to our recommendations.

As a whole, we are neutral on the bill. However, we do have some concerns and recommend a few remaining revisions, which are detailed in this memo.

Thank you for your hard work and for soliciting our input. Please let us know if you have any questions.

Sincerely,

Dr. Timothy Hinterberger
Chair
Campaign to Regulate Marijuana Like Alcohol in Alaska

Rachelle Yeung, Esq.
Legislative Analyst
Marijuana Policy Project

Recommendations for HB 75, Draft I

1. HB 75, Draft I imposes a statewide household cap of 12 plants per multi-adult home. We recommend deference to municipalities and a higher limit. (Sec. 2)

Under AS 17.39.020, Measure 2 allows each adult 21 years of age or older to possess up to six plants (three mature), with no household cap on plants. Municipalities desire further clarity on their ability to enforce this possession limit in households where two or more adults reside.

The language regarding personal plant possession in Alaska is very similar to the language in Colorado's 2012 ballot initiative, which has been codified into their state constitution. In that state, local governments have imposed household limits similar to the one proposed in HB 75 without legal challenge. However, that does not mean a challenge may not come down the road. In addition, there is no statewide household limit in Colorado, as is being proposed here.

Generally, in Colorado, local governments have the authority to regulate household possession limits through zoning ordinances. The Alaska State Legislature could show similar deference to municipalities in deciding the household limit that would be appropriate for their communities. Furthermore, it is quite common for families to include three or more adults residing in the same location. If there were a statewide cap, we would encourage that it be, at a minimum, no lower than 18 plants.

2. HB 75, Draft I adds a new section, AS 17.38.105, relating to the municipal protest and review process. (Sec. 7)

This new section was modeled after the existing municipal protest and review process under Title 4, relating to alcohol licensing (AS 04.11.520 and AS 04.11.480). The Campaign concurs that it would be more efficient and convenient for municipalities to mirror their marijuana-related registration processes after existing alcohol-related processes. The objective of the initiative, after all, was to regulate marijuana like alcohol.

We do not oppose the addition of this new section so long as the process does not delay the application period for applicants, raise costs, or otherwise conflict with Measure 2. As described in AS 17.38.100(d) of Measure 2, the state regulatory board must accept or reject an annual registration within 90 days of receiving an application. The municipal protest and review process must not extend the timeline beyond that 90-day period.

3. HB 75, Draft I adds several new sections, AS 17.38.200 et seq., relating to the exercise of the local option to prohibit marijuana establishments. (Sec. 17)

Under AS 17.38.100(a), Measure 2 allows municipalities 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." The new local option sections under HB 75 elaborate upon that voter initiative process for an established village. Throughout the new local option sections, the bill refers to the prohibition of the operation of "marijuana establishments."

The initiative makes clear that a municipality may choose to prohibit one type of marijuana establishment, which is defined as “a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store,” but not others. For example, a municipality may choose to allow the operation of retail marijuana stores only, but not any of the other types of licensed establishments. This flexibility should be given to established villages as well.

Adopted

#1
~~29 LS0345/P.5~~
Martin
2/27/15

AMENDMENT - *AM*

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSHB 75(CRA), Draft Version "P"

1 Page ¹¹~~9~~, line ⁴~~13~~:

2 Delete all material and insert:

3 "(17) "public place" means a place to which the public or a substantial
4 group of persons has access and includes highways, transportation facilities, schools,
5 places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies,
6 and other portions of apartment houses and hotels not constituting rooms or
7 apartments designed for actual residence; "public place" does not include a marijuana
8 club."

But not limited to,

#2

29-I.S0345P.6

Martin
3/2/15

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSHB 75(CRA), Draft Version "P"

- 1 Page ~~9~~¹¹, line ~~1~~², following "by":
- 2 Insert "paying"

↓
 Conceptual
 "and does not allow persons
 under the age of 21 on
 the premises while marijuana
 is being consumed."
 ↳ During business
 hours or while
 marijuana is in
 plain view

Adopted

#3

29-LS0345V.1
Martin
3/2/15

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: CSHB 75(CRA), Draft Version "I"

1 Page 2, line 29, following "section":

2 Insert ";

3 (C) growing marijuana plants for another person in a place

4 other than that other person's residence"

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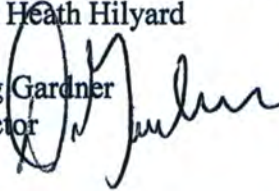
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 4, 2015

SUBJECT: Conceptual Amendment to CSHB 75(CRA)
(Work Order No. 29-LS0345\I)

TO: Representative Cathy Tilton
Chair of the House Community and Regional Affairs Committee
Attn: Heath Hilyard

FROM: Doug Gardner
Director 

Mr. Hilyard of your office called after receiving Legislative Counsel Hillary Martin's memorandum of March 3, 2015, addressing a conceptual amendment that was made to the definition of "marijuana club" in CSHB 75(CRA); Work Order No. 29-LS0345\I.

The concern that Ms. Martin correctly raised was that the conceptual amendment to the definition of "marijuana club" adds substantive material to a definition, creating what we at Legislative Legal Services call a "stuffed definition." The concern with "stuffed definitions" is that people reading the statute, that don't read the definition, are not made aware of substantive law provisions that are, as the saying goes "stuffed in the definition." I did not feel, that even with the latitude that Legislative Legal Services has to "fix" conceptual amendments, that we could fix this concern without going into the bill's substantive sections to do so; these are decisions that the committee needs to make.

The other concern with the conceptual amendment noted above, is that the amendment may create a substantive problem in the bill that the maker of the amendment did not intend, that could undercut the intent of the amendment. The concern we have is that if language in the conceptual amendment regarding persons under 21 not being allowed in a "marijuana club" is inserted in this definition relating to this type of establishment, and is not inserted in relation to other marijuana establishments, the conclusion a court or others interpreting this bill down the road may have is that the legislature inserted the restriction only where it intended it to apply, and where the legislature didn't insert the restriction, it meant to *allow* persons under 21 to accompany an adult patron, etc., into other marijuana establishments.

So, the options are: (1) we draft this provision as requested by the committee despite the issues raised; (2) we draft a substantive provision or provisions as an alternative amendment for the bill that avoids the concerns raised, and if desired, the committee could rescind its action regarding the current conceptual amendment, and replace it with

Representative Cathy Tilton

March 4, 2015

Page 2

the new amendment; or (3) a decision could be made by the committee that the amendment is not necessary in light of the current definition of "marijuana club" that requires patrons who enter to be 21 years of age or older and members.

Please advise us on how you want to proceed as soon as possible as I am aware that the bill is still in the committee's possession, and that it may be heard again on Thursday.

DDG:lem

15-144.lem

CONFERENCE CS FOR HOUSE BILL NO. 75
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to background checks for persons applying to operate marijuana**
2 **establishments; relating to possessing, using, displaying, purchasing, growing,**
3 **processing, transporting, and transferring marijuana; relating to assisting another**
4 **person 21 years of age or older in activities related to marijuana; relating to established**
5 **villages and to local option elections regarding the operation of marijuana**
6 **establishments; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 12.62.400(a) is amended to read:

9 (a) To obtain a national criminal history record check for determining a
10 person's qualifications for a license, permit, registration, employment, or position, a
11 person shall submit the person's fingerprints to the department with the fee established
12 by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau
13 of Investigation to obtain a national criminal history record check of the person for the

1 purpose of evaluating a person's qualifications for

2 (1) a license or conditional contractor's permit to manufacture, sell,
3 offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage
4 under AS 04.11;

5 (2) licensure as a mortgage lender, a mortgage broker, or a mortgage
6 loan originator under AS 06.60;

7 (3) admission to the Alaska Bar Association under AS 08.08;

8 (4) licensure as a collection agency operator under AS 08.24;

9 (5) a certificate of fitness to handle explosives under AS 08.52;

10 (6) licensure as a massage therapist under AS 08.61;

11 (7) licensure to practice nursing or certification as a nurse aide under
12 AS 08.68;

13 (8) certification as a real estate appraiser under AS 08.87;

14 (9) a position involving supervisory or disciplinary power over a minor
15 or dependent adult for which criminal justice information may be released under
16 AS 12.62.160(b)(9);

17 (10) a teacher certificate under AS 14.20;

18 (11) licensure as a security guard under AS 18.65.400 - 18.65.490;

19 (12) a concealed handgun permit under AS 18.65.700 - 18.65.790;

20 (13) licensure as an insurance producer, managing general agent,
21 reinsurance intermediary broker, reinsurance intermediary manager, surplus lines
22 broker, or independent adjuster under AS 21.27;

23 (14) serving and executing process issued by a court by a person
24 designated under AS 22.20.130;

25 (15) a school bus driver license under AS 28.15.046;

26 (16) licensure as an operator or an instructor for a commercial driver
27 training school under AS 28.17;

28 (17) registration as a broker-dealer, agent, investment adviser
29 representative, or state investment adviser under AS 45.55.030 - 45.55.060;

30 **(18) a registration or license to operate a marijuana establishment**
31 **under AS 17.38.**

1 * **Sec. 2.** AS 17.38.020 is amended to read:

2 **Sec. 17.38.020. Personal use of marijuana.** Notwithstanding any other
3 provision of law, except as otherwise provided in this chapter, the following acts, by
4 persons 21 years of age or older, are lawful and **are not** [SHALL NOT BE A] criminal
5 or civil **offenses** [OFFENSE] under Alaska law or the law of any political subdivision
6 of Alaska or **bases** [BE A BASIS] for seizure or forfeiture of assets under Alaska law:

7 (1) possessing, using, displaying, purchasing, or transporting
8 marijuana accessories or one ounce or less of marijuana;

9 (2) possessing, growing, processing, or transporting **not** [NO] more
10 than six marijuana plants, with three or fewer being mature, flowering plants, and
11 possession of the marijuana produced by the plants on the premises where the plants
12 were grown, **except that not more than 12 marijuana plants, with six or fewer
13 being mature, flowering plants, may be present in a single dwelling regardless of
14 the number of persons 21 years of age or older residing in the dwelling;**

15 (3) transferring one ounce or less of marijuana and up to six immature
16 marijuana plants to a person who is 21 years of age or older without remuneration;

17 (4) consumption of marijuana, except that nothing in this chapter
18 **permits** [SHALL PERMIT] the consumption of marijuana in public; and

19 (5) assisting, **aiding, or supporting** another person who is 21 years of
20 age or older in any of the acts described in (1) - (4) of this section.

21 * **Sec. 3.** AS 17.38.200(a) is amended to read:

22 (a) Each application or renewal application for a registration to operate a
23 marijuana establishment shall be submitted to the board. A renewal application may be
24 submitted up to 90 days **before** [PRIOR TO] the expiration of the marijuana
25 establishment's registration. **When filing an application under this subsection, the
26 applicant shall submit the applicant's fingerprints and the fees required by the
27 Department of Public Safety under AS 12.62.160 for criminal justice information
28 and a national criminal history record check. The board shall forward the
29 fingerprints and fees to the Department of Public Safety to obtain a report of
30 criminal justice information under AS 12.62 and a national criminal history
31 record check under AS 12.62.400.**

1 * **Sec. 4.** AS 17.38.210(a) is amended to read:

2 (a) A local government may prohibit the operation of marijuana cultivation
3 facilities, marijuana product manufacturing facilities, marijuana testing facilities, or
4 retail marijuana stores through the enactment of an ordinance or by a voter initiative.

5 **An established village may prohibit the operation of marijuana cultivation**
6 **facilities, marijuana product manufacturing facilities, marijuana testing facilities,**
7 **or retail marijuana stores as provided in AS 17.38.300.**

8 * **Sec. 5.** AS 17.38.210 is amended by adding a new subsection to read:

9 (m) Except as provided in AS 29, the exercise of the powers authorized by this
10 section by a borough may be exercised only on a nonareawide basis. In this
11 subsection, "nonareawide" means throughout the area of a borough outside all cities in
12 the borough.

13 * **Sec. 6.** AS 17.38 is amended by adding new sections to read:

14 **Sec. 17.38.300. Local option election by an established village.** (a) If a
15 majority of the voters voting on the question vote to approve the option, an established
16 village shall exercise a local option to prohibit the operation of one or more of the
17 following types of marijuana establishments:

- 18 (1) marijuana cultivation facilities;
19 (2) marijuana product manufacturing facilities;
20 (3) marijuana testing facilities; or
21 (4) retail marijuana stores.

22 (b) A ballot question to adopt a local option under this section must at least
23 contain language substantially similar to the following: "Shall (name of village) adopt
24 a local option to prohibit (specify local option under (a) of this section)? (yes or no)."

25 **Sec. 17.38.310. Removal of local option.** (a) If a majority of the voters voting
26 on the question vote to remove the option, an established village shall remove a local
27 option previously adopted under AS 17.38.300. The option is repealed effective the
28 first day of the month following certification of the results of the election.

29 (b) A ballot question to remove a local option under this section must at least
30 contain language substantially similar to the following: "Shall (name of village)
31 remove the local option currently in effect, that prohibits (current local option under

1 AS 17.38.300(a)), so that there is no longer any local option in effect? (yes or no)."

2 (c) When issuing a registration in the area that has removed a local option, the
3 board shall give priority to an applicant who was formerly registered and whose
4 registration was not renewed because of the results of the previous local option
5 election. However, an applicant described in this subsection does not have a legal right
6 to registration, and the board is not required to approve the application.

7 **Sec. 17.38.320. Effect on registrations of prohibition of marijuana**
8 **establishments.** If a majority of voters vote to prohibit the operation of marijuana
9 establishments under AS 17.38.300, the board may not issue, renew, or transfer,
10 between persons or locations, a registration for a marijuana establishment located
11 within the perimeter of the established village. A registration that may not be renewed
12 because of a local option election held under AS 17.38.300 is void 90 days after the
13 results of the election are certified. A registration that expires during the 90 days after
14 the results of a local option election are certified may be extended, until it is void
15 under this section, by payment of a prorated portion of the annual registration fee.

16 **Sec. 17.38.330. Prohibition of sale and manufacture after election.** (a) If a
17 majority of the voters vote to prohibit the operation of marijuana establishments under
18 AS 17.38.300, a person may not knowingly sell or manufacture marijuana in the
19 established village.

20 (b) If there are registered establishments within the established village, the
21 prohibition on sale and manufacture is effective beginning 90 days after the results of
22 the election are certified.

23 (c) Nothing in this section prohibits the personal conduct authorized in
24 AS 17.38.020.

25 (d) A person who violates this section is guilty, upon conviction, of a class A
26 misdemeanor. Each violation is a separate offense.

27 **Sec. 17.38.340. Procedure for local option elections.** (a) An election to adopt
28 a local option under AS 17.38.300 or remove a local option under AS 17.38.310 shall
29 be conducted as required in this section.

30 (b) Upon receipt of a petition of 35 percent or more of the registered voters
31 residing within an established village, the lieutenant governor shall place on a separate

1 ballot at a special election the local option or removal of local option that constitutes
2 the subject of the petition. The lieutenant governor shall conduct the election under
3 AS 15.

4 (c) An election under (b) of this section to remove a local option may not be
5 conducted during the first 24 months after the local option was adopted or more than
6 once in a 36-month period.

7 (d) After a petition has been certified as sufficient to meet the requirements of
8 (b) of this section, another petition may not be filed or certified until after the question
9 presented in the first petition has been voted on. A local option question to prohibit the
10 operation of marijuana cultivation facilities, marijuana product manufacturing
11 facilities, marijuana testing facilities, or retail marijuana stores or to prohibit all
12 marijuana establishments may be presented in one election.

13 **Sec. 17.38.350. Establishment of perimeter of established village.** (a)
14 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.300 and
15 17.38.320, the perimeter of an established village is a circle around the established
16 village that includes an area within a five-mile radius of the post office of the
17 established village. If the established village does not have a post office, the perimeter
18 of an established village is a circle around the established village that includes an area
19 within a five-mile radius of another site selected by the local governing body or by the
20 board if the established village does not have a local governing body.

21 (b) If the perimeter of an established village determined under (a) of this
22 section includes any area that is within the perimeter of another established village
23 and, if the other established village has

24 (1) also adopted a local option under AS 17.38.300, the local option of
25 the established village that is less restrictive applies in the overlapping area;

26 (2) not adopted a local option under AS 17.38.300, the local option
27 does not apply in the overlapping area.

28 (c) If the board determines that the perimeter of an established village as
29 provided under (a) and (b) of this section does not accurately reflect the perimeter of
30 the established village, the board may establish the perimeter of the established village
31 and the areas of overlapping perimeter described under (b) of this section for purposes

1 of applying a local option selected under this chapter.

2 **Sec. 17.38.360. Notice of the results of a local option election.** If a majority
3 of the voters vote to adopt or remove a local option under AS 17.38.300 or 17.38.310,
4 the lieutenant governor shall notify the board of the results of the election immediately
5 after the results are certified. The board shall immediately notify the Department of
6 Law and the Department of Public Safety of the results of the election.

7 **Sec. 17.38.370. Bail forfeiture for certain offenses.** The supreme court shall
8 establish by rule or order a schedule of bail amounts that may be forfeited without
9 court appearance for a violation of AS 17.38.030 - 17.38.050.

10 * **Sec. 7.** AS 17.38.900 is amended by adding new paragraphs to read:

11 (17) "dwelling" has the meaning given in AS 11.81.900;

12 (18) "established village" means an area that does not contain any part
13 of an incorporated city or another established village and that is an unincorporated
14 community that is in the unorganized borough and that has 25 or more permanent
15 residents;

16 (19) "manufacture" has the meaning given in AS 11.71.900.

17 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature Conference Committee



House:

Representative Tilton, Chair
Representative Millett
Representative Drummond

Senate:

Senator Bishop, Chair
Senator McGuire
Senator Hoffman

HB 75: MARIJUANA REG; CLUBS; MUNIS; LOCAL OPT ELECT

"An Act relating to background checks for persons applying to operate marijuana establishments; relating to possessing, using, displaying, purchasing, growing, processing, transporting, and transferring marijuana; relating to assisting another person 21 years of age or older in activities related to marijuana; relating to established villages and to local option elections regarding the operation of marijuana establishments; and providing for an effective date."

HB 75

Narrative on Comparison

2dSCSCSHB 75 (RLS) to CSHB 75 (JUD) am
(29-LS0345\AA) (29-LS0345\U.A)

NARRATIVE AND HISTORY:

The version of HB 75 that left the House April 2nd of last year and the version of HB 75 that left the Senate on February 24th of this year are functionally different bills dealing with the same subject matter, generally speaking.

When the House Community and Regional Affairs committee began drafting the initial bill, the committee's intent was to draft legislation that would guide municipalities in crafting local ordinances in advance of a comprehensive regulation package to be written and adopted by a/the Marijuana Control Board (MCB) created in a later bill (HB 123).

In the interim between adjournment of the 1st regular session of the 29th Alaska State Legislature and the convening of the 2nd regular session of the 29th Legislature, the newly created MCB wrote and adopted a regulation package that made significant portions of CSHB 75 (JUD) am moot.

However, it was during the regulation drafting process that the Department of Public Safety identified that HB 123 had required criminal background checks to prohibit felons from obtaining commercial marijuana registrations necessary for the MCB to process applications for registrations, but HB 123 had failed to amend other sections of statute to allow that process to occur. Two sections of statute need to be amended to allow the MCB to submit the request for criminal background checks to the Department of Public Safety and further to allow the Department of Public Safety to forward those request to the Federal Bureau of Investigation for completion.

Within the first month of the 2nd regular session, the Senate Rules committee substantially retooled HB 75 in response to those necessary changes identified by the MCB and retained small number of other policy provisions that either came from the version as it passed the House or were added during the Senate committee process. Generally speaking, most of the

changes made by the version that passed the Senate are timely, necessary and not in question as a matter of policy.

As the current version stands, there is only one section that is identical to the way it passed the House and the way it passed the Senate. Further, there are only two sections remaining in the Senate version that are similar in nature to the House version.

Those are:

IDENTICAL – Nonareawide Powers

Section 5 (Page 4, lines 11-15) of the current version and Section 18 (Page 8, lines 1-4) of the version that passed the House both stipulate that any powers authorized to boroughs may only be adopted on a “nonareawide” basis, meaning that those powers would not extend into cities that lay within a borough’s boundaries.

SIMILAR IN NATURE – Household Plant Limits & Local Options – conference items

- **Household Plant Limit** – Section 2 (Page 3, lines 1-20) of the current version and Section 2 (Page 2, lines 10-29) of the version that passed the House both contain a household plant limit. However, the House passed a version with “not more than **24**” and the Senate passed a version with “not more than **12**”.
- **Local Option** – Sections 4 (Page 4, lines 1-10) and 6 (Page 4 line 16 through Page 6 line 25) of the current version and Sections 9 (Page 5, lines 29-31) and 19 (Page 8 line 6 through Page 10 line 20) of the version that passed the House both provide a local option and the procedures associated with conducting a local option election. However the current version stipulates that it is an “**opt in**” provision and the version that passed the House is an “**opt out**” provision. In short, under the Senate version commercial marijuana establishments are prohibited in non-incorporated areas in the Unorganized Borough unless they hold a local option election while the House version provided that commercial marijuana establishments are allowed in those non-incorporated areas of the Unorganized Borough unless they exercise a local option to prohibit those establishments. It should be noted that the actual procedures for conducting local option elections are identical and mirror the same process as provided in Title 4 pertaining to alcohol.

Community Name	Incorporation Type
Adak	2nd Class City
Akiak	2nd Class City
Alakanuk	2nd Class City
Aleknagik	2nd Class City
Allakaket	2nd Class City
Angoon	2nd Class City
Aniak	2nd Class City
Anvik	2nd Class City
Atka	2nd Class City
Bethel	2nd Class City
Bettles	2nd Class City
Brevig Mission	2nd Class City
Chefornak	2nd Class City
Chevak	2nd Class City
Chuathbaluk	2nd Class City
Clark's Point	2nd Class City
Coffman Cove	2nd Class City
Cordova	Home Rule City
Craig	1st Class City
Delta Junction	2nd Class City
Dillingham	1st Class City
Diomede	2nd Class City
Eagle	2nd Class City
Edna Bay	2nd Class City
Eek	2nd Class City
Ekwok	2nd Class City
Elim	2nd Class City
Emmonak	2nd Class City
Fort Yukon	2nd Class City
Galena	1st Class City
Gambell	2nd Class City
Golovin	2nd Class City
Goodnews Bay	2nd Class City
Grayling	2nd Class City
Gustavus	2nd Class City
Holy Cross	2nd Class City
Hoonah	1st Class City
Hooper Bay	2nd Class City
Hughes	2nd Class City
Huslia	2nd Class City
Hydaburg	1st Class City
Kake	1st Class City
Kaltag	2nd Class City
Kasaan	2nd Class City
Klawock	1st Class City
Kotlik	2nd Class City
Koyuk	2nd Class City
Koyukuk	2nd Class City

Kwethluk	2nd Class City
Lower Kalskag	2nd Class City
Manokotak	2nd Class City
Marshall	2nd Class City
McGrath	2nd Class City
Mekoryuk	2nd Class City
Mountain Village	2nd Class City
Napakiak	2nd Class City
Napaskiak	2nd Class City
Nenana	Home Rule City
New Stuyahok	2nd Class City
Nightmute	2nd Class City
Nikolai	2nd Class City
Nome	1st Class City
Nulato	2nd Class City
Nunam Iqua	2nd Class City
Nunapitchuk	2nd Class City
Pelican	1st Class City
Pilot Station	2nd Class City
Platinum	2nd Class City
Port Alexander	2nd Class City
Quinhagak	2nd Class City
Ruby	2nd Class City
Russian Mission	2nd Class City
Saint George	2nd Class City
Saint Mary's	1st Class City
Saint Michael	2nd Class City
Saint Paul	2nd Class City
Savoonga	2nd Class City
Scammon Bay	2nd Class City
Shageluk	2nd Class City
Shaktoolik	2nd Class City
Shishmaref	2nd Class City
Stebbins	2nd Class City
Tanana	1st Class City
Teller	2nd Class City
Tenakee Springs	2nd Class City
Thorne Bay	2nd Class City
Togiak	2nd Class City
Toksook Bay	2nd Class City
Unalakleet	2nd Class City
Unalaska	1st Class City
Upper Kalskag	2nd Class City
Valdez	Home Rule City
Wales	2nd Class City
White Mountain	2nd Class City
Whittier	2nd Class City

SCHEDULE OF LOCAL OPTION COMMUNITIES

Updated January 22, 2015

City	Zip Code	Ban sale	Sale by specific type of license only	Ban sale and importation	Ban sale, importation & possession	Vote Tally	Election date	Certification date	Effective date	Limitations
Akiak	99552				●	38-15	7/17/1991	8/21/1991	9/1/1991	
Akiachak*	99551				●	40-13	8/7/2001	8/23/2001	10/22/2001	
Alakanuk	99554				●	47-7	2/6/1990	2/12/1990	3/1/1990	
Aleknagik	99555	●				25-9	6/10/2011	6/16/2011	7/1/2011	Outdoor Recreation Lodge License Only
Allakaket	99720				●	45-34	5/12/1989	5/19/1989	8/17/1989	
Ambler	99786				●		12/15/1981	12/15/1981	1/1/1982	
Anvik	99558	●				23-6	1/16/2002	1/21/2002	2/1/2002	
Anaktuvuk Pass	99721				●	59-45	11/4/1986	12/16/1986	1/1/1987	
Angoon	99820	●				86-82	1/8/2013	1/13/2013	2/1/2013	
Atmautluak*	99559				●	60-12	10/6/1981	4/29/1982	5/1/1982	
Atkasuk	99791				●	59-43	4/15/2003	4/21/2003	6/30/2003	
Barrow	99723	●				911-789	10/7/1997	10/9/1997	11/1/1997	
Beaver*	99724				●	17-11	6/15/2004	7/9/2004	8/1/2004	
Birch Creek*	99740				●	13-2	10/6/1987	10/22/1987	11/1/1987	
Brevig Mission	99785				●	34-32	3/3/1999	3/5/1999	5/3/1999	
Buckland	99727				●	52-6	5/10/1982	5/11/1982	6/1/1982	
Chalkyitsik*	99788				●	21-2	7/20/1982	7/28/1982	8/1/1982	
Chefornak	99561				●	48-29	10/14/1982	10/15/1982	11/1/1982	
Chevak	99563				●	88-63	10/2/1990	10/2/1990	11/1/1990	
Deering	99736				●	32-24	5/26/1982	6/1/1982	7/1/1982	
Diomede	99762				●	27-12	9/10/1981	9/29/1981	10/1/1981	
Eek	99578				●	90-15	11/27/1982	11/27/1982	12/1/1982	
Elim	99739				●	49-17	8/24/1981	8/27/1981	9/1/1981	
Emmonak	99581				●	104-89	10/1/1991	10/7/1991	7/14/1992	
False Pass	99583	●				34-6	10/2/2001	10/5/2001	11/1/2001	
Fort Yukon	99740		●			130-78	11/24/2009	11/24/2009	12/1/2009	Package Store Only
Gambell	99742				●	72-13	12/23/1986	12/29/1986	1/1/1987	
Golovin	99762				●	31-22	1/16/1984	1/17/1984	2/1/1984	
Goodnews Bay	99589				●	37-11	1/14/1991	1/18/1991	2/1/1991	
Grayling	99590	●				36-27	11/5/1996	11/12/1996	12/1/1996	

*1 Incorporated

SCHEDULE OF LOCAL OPTION COMMUNITIES

Updated January 22, 2015

City	Zip Code	Ban sale	Sale by specific type of license only	Sale by municipality operated license only	Ban sale and importation	Ban sale, importation & possession	Vote Tally	Election date	Certification date	Effective date	Limitations
Gulkana*	99586				●		17-3	1/14/1997	1/28/1997	3/30/1998	
Holy Cross	99602	●					42-31	10/3/2000	10/6/2000	11/1/2000	
Hooper Bay	99604			●			103-44	3/1/1983	3/1/1983	4/1/1983	
Hughes	99745	●					17-4	3/2/1993	3/29/1993	4/1/1993	
Huslia	99746	●					37-13	3/14/1989	3/23/1989	4/1/1989	
Iliamna*	99606	●					35-24	10/5/1982	10/25/1982	1/23/1983	
Kake	99830		●								Package Store Only
Kaktovik	99747			●			56-39	8/1/1989	8/7/1989	11/5/1989	
Kasigluk*	99609			●			74-10	10/4/1983	10/17/1983	11/1/1983	
Kiana	99749		●				80-62	10/6/2009	10/12/2009	11/1/2009	Package Store Only with Distribution Center
Kipnuk*	99614			●			82-7	10/5/1982	10/25/1982	11/1/1982	
Kivalina	99750			●			79-33	1/8/1985	1/9/1985	2/1/1985	
Klawock	99925		●				111-70	10/5/1993	10/11/1993	10/11/1993	Package Store
Kobuk	99751			●			15-12	3/29/1989	4/3/1989	5/1/1989	
Kokhanok*	99606	●					31-18	6/28/2005	7/14/2005	8/1/2005	
Kongiganak*	99545			●			41-10	4/23/1996	5/27/1984	6/1/1996	
Kotlik	99620			●			51-22	3/24/1987	3/25/1987	4/1/1987	
Kotzebue	99752		●				412-365	10/6/2009	10/12/2009	11/1/2009	Package Store Only with Distribution Center
Koyuk	99753			●			57-8	8/25/1981	8/26/1981	9/1/1981	
Kwethluk	99621			●			82-30	1/1/1982	2/24/1982	3/1/1982	
Kwigillingok*	99622			●			63-5	8/9/1983	9/1/1983	10/1/1983	
Lower Kalskag	99626			●			46-31	11/5/1991	11/7/1991	12/1/1991	
Manokotak	99628			●			80-8	1/29/1988	2/1/1988	3/1/1988	
Marshall	99585			●			37-34	10/7/1986	10/8/1986	11/1/1986	
Mekoryuk	99630			●			42-29	10/7/1986	10/8/1986	11/1/1986	
Minto*	99758			●			59-34	7/12/1983	7/21/1983	8/1/1983	
Mountain Village	99632			●			72-52	3/13/1984	3/19/1984	4/1/1984	

*1 Incorporated

Alcoholic Beverage Control Board
 2400 Viking Drive
 Anchorage AK 99501
 Cynthia Franklin, Director
 (907) 269-0350 Fax (907) 334-2285

SCHEDULE OF LOCAL OPTION COMMUNITIES

Updated January 22, 2015

City	Zip Code	Ban sale	Sale by specific type of license only	Ban sale by municipality operated license only	Ban sale, importation & possession	Vote Tally	Election date	Certification date	Effective date	Limitations
Nanwalek/ English Bay*	99603	•				47-29	1/13/1998	1/26/1998	2/1/1998	
Napakiak	99634				•	62-14	5/5/1987	5/19/1987	6/1/1987	
Napaskiak	99559			•		55-4	11/1/1982	11/8/1982	12/1/1982	
Naukati*	99901		•			31-13	3/26/1996	4/8/1996	5/1/1996	
Newtok*	99559			•		37-9	10/30/1984	11/2/1984	12/1/1984	
Nightmute	99690				•	32-3	2/2/1996	2/6/1996	4/9/1996	
Nikolai	99691	•				37-18	8/19/2014	9/2/2014	10/1/2014	
Noatak*	99761			•		69-53	12/7/1982	12/22/1982	1/1/1983	
Nondalton	99640	•				46-30	11/10/1986	12/30/1986	1/28/1987	
Noorvik	99763			•		103-58	4/28/1987	4/28/1987	5/1/1987	
Nulato	99765		•			67-29	7/11/2006	7/11/2006	8/1/2006	Package Store Only
Nuiqsut	99789				•	60-56	11/4/1986	11/12/1986	12/1/1986	
Nunapitchuk	99641				•	75-23	10/7/1986	10/13/1986	11/1/1986	
Pilot Station	99650			•		93-76	3/4/2003	3/4/2003	4/1/2003	
Platinum	99651			•		12-9	1/14/1982	1/25/1982	2/1/1982	
Point Hope	99766				•	75-57	10/3/1989	10/9/1989	11/1/1989	
Point Lay*	99759			•		30-15	7/1/1986	7/11/1986	8/1/1986	
Port Alexander	99836	•				31-16	1/5/1982	1/11/1982	2/1/1982	
Port Protection*	99927		•			23-9	3/27/1988	4/5/1988	5/1/1988	
Quinhagak	99655				•	71-27	10/6/1987	10/12/1987	11/1/1987	
Red Devil*	99656	•				17-8	2/20/1990	4/27/1990	7/26/1990	
Russian Mission	99657	•				85-49	12/26/2014	1/21/2015	2/1/2015	
Saint Mary's	99658	•				98-71	10/3/2006	10/10/2006	11/1/2006	
Saint Michael	99659			•		39-21	8/4/1986	8/7/1986	9/1/1986	
Saint Paul	99660		•			104-46	10/2/2007	10/11/2007	11/1/2007	
Savoonga	99769				•	117-56	10/7/1997	10/10/1997	12/9/1997	
Scammon Bay	99662				•	71-25	10/6/1987	10/12/1987	11/1/1987	
Selawik	99770			•		89-69	12/17/1986	12/22/1986	1/1/1987	
Shageluk	99665	•				29-25	2/20/2001	3/19/2001	4/1/2001	
Shaktolik	99771			•		34-28	3/13/1984	3/15/1984	4/1/1984	
Sheldon Point (Nunam Iqua)	99666				•	26-7	8/26/1986	8/27/1986	9/1/1986	
Shishmaref	99772			•		82-47	1/4/1983	1/4/1983	2/1/1983	
Shungnak	99773			•		46-44	10/6/1987	10/10/1987	11/1/1987	

*I Incorporated

SCHEDULE OF LOCAL OPTION COMMUNITIES

Updated January 22, 2015

City	Zip Code	Local Option Election Type					Vote Tally	Election date	Certification date	Effective date	Limitations
		Ban sale	Sale by specific type of license only	Ban sale and importation	Ban sale, importation & possession	Sale by municipality operated license only					
Stebbins	99671				●		88-19	8/25/1987	10/8/1987	11/1/1987	
Stevens Village*	99774				●		31-11	6/5/1984	6/15/1984	7/1/1984	
Takotna*	99675	●					22-8	8/24/1999	9/9/1999	12/8/1999	Package Store and Beverage Dispensary Only
Tanana	99777		●				90-15	1/12/1982	1/13/1982	2/1/1982	
Tanacross*	99776				●		32-5	5/17/1988	5/31/1988	6/1/1988	
Tatitlek*	99677				●		28-15	8/23/1983	9/13/1983	12/9/1999	
Teller	99778	●					55-41	11/13/1997	11/14/1997	1/14/1998	
Tetlin*	99779				●		54-7	12/7/1982	12/22/1982	1/1/1983	
Togiak	99678				●		80-38	10/7/1986	10/31/1986	11/1/1986	
Toksook Bay	99637				●		99-48	10/2/2012	10/7/2012	11/1/2012	
Tuluksak*	99679				●		55-12	4/12/1994	4/25/1994	5/1/1994	
Tuntutuliak*	99680				●		41-22	10/6/1987	10/28/1987	11/1/1987	
Tununak*	99681				●		90-11	8/12/1981	8/13/1981	9/1/1981	
Twin Hills*	99576				●		13-5	3/14/2000	3/30/2000	5/30/2000	
Unalakleet	99684	●					121-40	4/14/1992	4/16/1992	5/1/1992	
Upper Kalskag	99607	●					45-25	11/6/2012	11/8/2012	11/8/2012	
Wainwright	99782				●		61-42	7/8/1982	7/14/1982	8/1/1982	
Wales	99783				●		29-21	8/14/1981	8/17/1981	9/1/1981	
Totals		21	5	7	42	33					

CHANGES THIS UPDATE:

City of Russian Mission changed their local option election to "Ban Sale" effective 2/1/15.

Are established villages **29**

Total ballots cast in all local option elections for ESTABLISHED VILLAGES: 1,547

This schedule is continuously updated as dictated by ongoing elections. If you have any questions, please do not hesitate to call the ABC Board office at 907-269-0350.

29-LS0345\NN
Martin
4/15/16

CONFERENCE CS FOR HOUSE BILL NO. 75
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to background checks for persons applying to operate marijuana**
2 **establishments; relating to possessing, using, displaying, purchasing, growing,**
3 **processing, transporting, and transferring marijuana; relating to assisting another**
4 **person 21 years of age or older in activities related to marijuana; relating to established**
5 **villages and to local option elections regarding the operation of marijuana**
6 **establishments; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 12.62.400(a) is amended to read:

9 (a) To obtain a national criminal history record check for determining a
10 person's qualifications for a license, permit, registration, employment, or position, a
11 person shall submit the person's fingerprints to the department with the fee established
12 by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau
13 of Investigation to obtain a national criminal history record check of the person for the

1 purpose of evaluating a person's qualifications for

2 (1) a license or conditional contractor's permit to manufacture, sell,
3 offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage
4 under AS 04.11;

5 (2) licensure as a mortgage lender, a mortgage broker, or a mortgage
6 loan originator under AS 06.60;

7 (3) admission to the Alaska Bar Association under AS 08.08;

8 (4) licensure as a collection agency operator under AS 08.24;

9 (5) a certificate of fitness to handle explosives under AS 08.52;

10 (6) licensure as a massage therapist under AS 08.61;

11 (7) licensure to practice nursing or certification as a nurse aide under
12 AS 08.68;

13 (8) certification as a real estate appraiser under AS 08.87;

14 (9) a position involving supervisory or disciplinary power over a minor
15 or dependent adult for which criminal justice information may be released under
16 AS 12.62.160(b)(9);

17 (10) a teacher certificate under AS 14.20;

18 (11) licensure as a security guard under AS 18.65.400 - 18.65.490;

19 (12) a concealed handgun permit under AS 18.65.700 - 18.65.790;

20 (13) licensure as an insurance producer, managing general agent,
21 reinsurance intermediary broker, reinsurance intermediary manager, surplus lines
22 broker, or independent adjuster under AS 21.27;

23 (14) serving and executing process issued by a court by a person
24 designated under AS 22.20.130;

25 (15) a school bus driver license under AS 28.15.046;

26 (16) licensure as an operator or an instructor for a commercial driver
27 training school under AS 28.17;

28 (17) registration as a broker-dealer, agent, investment adviser
29 representative, or state investment adviser under AS 45.55.030 - 45.55.060;

30 **(18) a registration or license to operate a marijuana establishment**
31 **under AS 17.38.**

1 * **Sec. 2.** AS 17.38.020 is amended to read:

2 **Sec. 17.38.020. Personal use of marijuana.** Notwithstanding any other
3 provision of law, except as otherwise provided in this chapter, the following acts, by
4 persons 21 years of age or older, are lawful and **are not** [SHALL NOT BE A] criminal
5 or civil **offenses** [OFFENSE] under Alaska law or the law of any political subdivision
6 of Alaska or **bases** [BE A BASIS] for seizure or forfeiture of assets under Alaska law:

7 (1) possessing, using, displaying, purchasing, or transporting
8 marijuana accessories or one ounce or less of marijuana;

9 (2) possessing, growing, processing, or transporting **not** [NO] more
10 than six marijuana plants, with three or fewer being mature, flowering plants, and
11 possession of the marijuana produced by the plants on the premises where the plants
12 were grown, **except that not more than 12 marijuana plants, with six or fewer
13 being mature, flowering plants, may be present in a single dwelling regardless of
14 the number of persons 21 years of age or older residing in the dwelling;**

15 (3) transferring one ounce or less of marijuana and up to six immature
16 marijuana plants to a person who is 21 years of age or older without remuneration;

17 (4) consumption of marijuana, except that nothing in this chapter
18 **permits** [SHALL PERMIT] the consumption of marijuana in public; and

19 (5) assisting, **aiding, or supporting** another person who is 21 years of
20 age or older in any of the acts described in (1) - (4) of this section.

21 * **Sec. 3.** AS 17.38.200(a) is amended to read:

22 (a) Each application or renewal application for a registration to operate a
23 marijuana establishment shall be submitted to the board. A renewal application may be
24 submitted up to 90 days **before** [PRIOR TO] the expiration of the marijuana
25 establishment's registration. **When filing an application under this subsection, the
26 applicant shall submit the applicant's fingerprints and the fees required by the
27 Department of Public Safety under AS 12.62.160 for criminal justice information
28 and a national criminal history record check. The board shall forward the
29 fingerprints and fees to the Department of Public Safety to obtain a report of
30 criminal justice information under AS 12.62 and a national criminal history
31 record check under AS 12.62.400.**

1 * **Sec. 4.** AS 17.38.210(a) is amended to read:

2 (a) A local government may prohibit the operation of marijuana cultivation
3 facilities, marijuana product manufacturing facilities, marijuana testing facilities, or
4 retail marijuana stores through the enactment of an ordinance or by a voter initiative.

5 **The operation of marijuana cultivation facilities, marijuana product**
6 **manufacturing facilities, marijuana testing facilities, and retail marijuana stores**
7 **in the unorganized borough outside of a municipality is prohibited. An**
8 **established village may permit the operation of marijuana cultivation facilities,**
9 **marijuana product manufacturing facilities, marijuana testing facilities, or retail**
10 **marijuana stores as provided in AS 17.38.300.**

11 * **Sec. 5.** AS 17.38.210(a), as amended by sec. 4 of this Act, is amended to read:

12 (a) A local government may prohibit the operation of marijuana cultivation
13 facilities, marijuana product manufacturing facilities, marijuana testing facilities, or
14 retail marijuana stores through the enactment of an ordinance or by a voter initiative.

15 [THE OPERATION OF MARIJUANA CULTIVATION FACILITIES,
16 MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA
17 TESTING FACILITIES, AND RETAIL MARIJUANA STORES IN THE
18 UNORGANIZED BOROUGH OUTSIDE OF A MUNICIPALITY IS
19 PROHIBITED.] An established village may prohibit [PERMIT] the operation of
20 marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana
21 testing facilities, or retail marijuana stores as provided in AS 17.38.300.

22 * **Sec. 6.** AS 17.38.210 is amended by adding a new subsection to read:

23 (m) Except as provided in AS 29, the exercise of the powers authorized by this
24 section by a borough may be exercised only on a nonareawide basis. In this
25 subsection, "nonareawide" means throughout the area of a borough outside all cities in
26 the borough.

27 * **Sec. 7.** AS 17.38 is amended by adding new sections to read:

28 **Sec. 17.38.300. Local option election by an established village.** (a) If a
29 majority of the voters voting on the question vote to approve the option, an established
30 village shall exercise a local option to permit the operation of one or more of the
31 following types of marijuana establishments:

- 1 (1) marijuana cultivation facilities;
- 2 (2) marijuana product manufacturing facilities;
- 3 (3) marijuana testing facilities; or
- 4 (4) retail marijuana stores.

5 (b) A ballot question to adopt a local option under this section must at least
6 contain language substantially similar to the following: "Shall (name of village) adopt
7 a local option to permit (specify local option under (a) of this section)? (yes or no)."

8 **Sec. 17.38.310. Removal of local option.** (a) If a majority of the voters voting
9 on the question vote to remove the option, an established village shall remove a local
10 option previously adopted under AS 17.38.300. The option is repealed effective the
11 first day of the month following certification of the results of the election.

12 (b) A ballot question to remove a local option under this section must at least
13 contain language substantially similar to the following: "Shall (name of village)
14 remove the local option currently in effect, that permits (current local option under
15 AS 17.38.300(a)), so that there is no longer any local option in effect? (yes or no)."

16 **Sec. 17.38.320. Effect on registrations of prohibition of marijuana**
17 **establishments.** If a majority of voters vote to remove a local option permitting the
18 operation of marijuana establishments under AS 17.38.300, the board may not issue,
19 renew, or transfer, between persons or locations, a registration for a marijuana
20 establishment located within the perimeter of the established village. A registration
21 that may not be renewed because of a local option election held under AS 17.38.300 is
22 void 90 days after the results of the election are certified. A registration that expires
23 during the 90 days after the results of a local option election are certified may be
24 extended, until it is void under this section, by payment of a prorated portion of the
25 annual registration fee.

26 **Sec. 17.38.330. Procedure for local option elections.** (a) An election to adopt
27 a local option under AS 17.38.300 or remove a local option under AS 17.38.310 shall
28 be conducted as required in this section.

29 (b) Upon receipt of a petition of 35 percent or more of the registered voters
30 residing within an established village, the lieutenant governor shall place on a separate
31 ballot at a special election the local option or removal of local option that constitutes

1 the subject of the petition. The lieutenant governor shall conduct the election under
2 AS 15.

3 (c) An election under (b) of this section to remove a local option may not be
4 conducted during the first 24 months after the local option was adopted or more than
5 once in a 36-month period.

6 (d) After a petition has been certified as sufficient to meet the requirements of
7 (b) of this section, another petition may not be filed or certified until after the question
8 presented in the first petition has been voted on. A local option question to permit the
9 operation of marijuana cultivation facilities, marijuana product manufacturing
10 facilities, marijuana testing facilities, or retail marijuana stores or to permit all
11 marijuana establishments may be presented in one election.

12 **Sec. 17.38.340. Establishment of perimeter of established village.** (a)
13 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.300 and
14 17.38.320, the perimeter of an established village is a circle around the established
15 village that includes an area within a five-mile radius of the post office of the
16 established village. If the established village does not have a post office, the perimeter
17 of an established village is a circle around the established village that includes an area
18 within a five-mile radius of another site selected by the local governing body or by the
19 board if the established village does not have a local governing body.

20 (b) If the perimeter of an established village determined under (a) of this
21 section includes any area that is within the perimeter of another established village
22 and, if the other established village has

23 (1) also adopted a local option under AS 17.38.300, the local option of
24 the established village that is less restrictive applies in the overlapping area;

25 (2) not adopted a local option under AS 17.38.300, the local option
26 does not apply in the overlapping area.

27 (c) If the board determines that the perimeter of an established village as
28 provided under (a) and (b) of this section does not accurately reflect the perimeter of
29 the established village, the board may establish the perimeter of the established village
30 and the areas of overlapping perimeter described under (b) of this section for purposes
31 of applying a local option selected under this chapter.

1 **Sec. 17.38.350. Notice of the results of a local option election.** If a majority
2 of the voters vote to adopt or remove a local option under AS 17.38.300 or 17.38.310,
3 the lieutenant governor shall notify the board of the results of the election immediately
4 after the results are certified. The board shall immediately notify the Department of
5 Law and the Department of Public Safety of the results of the election.

6 **Sec. 17.38.360. Bail forfeiture for certain offenses.** The supreme court shall
7 establish by rule or order a schedule of bail amounts that may be forfeited without
8 court appearance for a violation of AS 17.38.030 - 17.38.050.

9 * **Sec. 8.** AS 17.38.300, enacted by sec. 7 of this Act, is amended to read:

10 **Sec. 17.38.300. Local option election by an established village.** (a) If a
11 majority of the voters voting on the question vote to approve the option, an established
12 village shall exercise a local option to **prohibit** [PERMIT] the operation of one or
13 more of the following types of marijuana establishments:

- 14 (1) marijuana cultivation facilities;
- 15 (2) marijuana product manufacturing facilities;
- 16 (3) marijuana testing facilities; or
- 17 (4) retail marijuana stores.

18 (b) A ballot question to adopt a local option under this section must at least
19 contain language substantially similar to the following: "Shall (name of village) adopt
20 a local option to **prohibit** [PERMIT] (specify local option under (a) of this section)?
21 (yes or no)."

22 * **Sec. 9.** AS 17.38.310(b), enacted by sec. 7 of this Act, is amended to read:

23 (b) A ballot question to remove a local option under this section must at least
24 contain language substantially similar to the following: "Shall (name of village)
25 remove the local option currently in effect, that **prohibits** [PERMITS] (current local
26 option under AS 17.38.300(a)), so that there is no longer any local option in effect?
27 (yes or no)."

28 * **Sec. 10.** AS 17.38.310, enacted by sec. 7 of this Act, is amended by adding a new
29 subsection to read:

30 (c) When issuing a registration in the area that has removed a local option, the
31 board shall give priority to an applicant who was formerly registered and whose

1 registration was not renewed because of the results of the previous local option
2 election. However, an applicant described in this subsection does not have a legal right
3 to registration, and the board is not required to approve the application.

4 * **Sec. 11.** AS 17.38.320, enacted by sec. 7 of this Act, is amended to read:

5 **Sec. 17.38.320. Effect on registrations of prohibition of marijuana**
6 **establishments.** If a majority of voters vote to prohibit [REMOVE A LOCAL
7 OPTION PERMITTING] the operation of marijuana establishments under
8 AS 17.38.300, the board may not issue, renew, or transfer, between persons or
9 locations, a registration for a marijuana establishment located within the perimeter of
10 the established village. A registration that may not be renewed because of a local
11 option election held under AS 17.38.300 is void 90 days after the results of the
12 election are certified. A registration that expires during the 90 days after the results of
13 a local option election are certified may be extended, until it is void under this section,
14 by payment of a prorated portion of the annual registration fee.

15 * **Sec. 12.** AS 17.38 is amended by adding a new section to read:

16 **Sec. 17.38.325. Prohibition of sale and manufacture after election.** (a) If a
17 majority of the voters vote to prohibit the operation of marijuana establishments under
18 AS 17.38.300, a person may not knowingly sell or manufacture marijuana in the
19 established village.

20 (b) If there are registered establishments within the established village, the
21 prohibition on sale and manufacture is effective beginning 90 days after the results of
22 the election are certified.

23 (c) Nothing in this section prohibits the personal conduct authorized in
24 AS 17.38.020.

25 (d) A person who violates this section is guilty, upon conviction, of a class A
26 misdemeanor. Each violation is a separate offense.

27 * **Sec. 13.** AS 17.38.330(d), enacted by sec. 7 of this Act, is amended to read:

28 (d) After a petition has been certified as sufficient to meet the requirements of
29 (b) of this section, another petition may not be filed or certified until after the question
30 presented in the first petition has been voted on. A local option question to prohibit
31 [PERMIT] the operation of marijuana cultivation facilities, marijuana product

1 manufacturing facilities, marijuana testing facilities, or retail marijuana stores or to
2 **prohibit** [PERMIT] all marijuana establishments may be presented in one election.

3 * **Sec. 14.** AS 17.38.900 is amended by adding new paragraphs to read:

4 (17) "dwelling" has the meaning given in AS 11.81.900;

5 (18) "established village" means an area that does not contain any part
6 of an incorporated city or another established village and that is an unincorporated
7 community that is in the unorganized borough and that has 25 or more permanent
8 residents;

9 (19) "manufacture" has the meaning given in AS 11.71.900.

10 * **Sec. 15.** Sections 5 and 8 - 13 of this Act take effect November 1, 2018.

11 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect immediately under
12 AS 01.10.070(c).

29-LS0345\PP
Martin
5/12/16

CONFERENCE CS FOR HOUSE BILL NO. 75

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE CONFERENCE COMMITTEE

Offered:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to possessing, using, displaying, purchasing, growing, processing,**
2 **transporting, and transferring marijuana; relating to assisting another person 21 years**
3 **of age or older in activities related to marijuana; relating to established villages and to**
4 **local option elections regarding the operation of marijuana establishments; and**
5 **providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** AS 17.38.020 is amended to read:

8 **Sec. 17.38.020. Personal use of marijuana.** Notwithstanding any other
9 provision of law, except as otherwise provided in this chapter, the following acts, by
10 persons 21 years of age or older, are lawful and **are not** [SHALL NOT BE A] criminal
11 or civil **offenses** [OFFENSE] under Alaska law or the law of any political subdivision
12 of Alaska or **bases** [BE A BASIS] for seizure or forfeiture of assets under Alaska law:

- 13 (1) possessing, using, displaying, purchasing, or transporting

1 marijuana accessories or one ounce or less of marijuana;

2 (2) possessing, growing, processing, or transporting **not** [NO] more
3 than six marijuana plants, with three or fewer being mature, flowering plants, and
4 possession of the marijuana produced by the plants on the premises where the plants
5 were grown, **except that not more than 12 marijuana plants, with six or fewer**
6 **being mature, flowering plants, may be present in a single dwelling regardless of**
7 **the number of persons 21 years of age or older residing in the dwelling;**

8 (3) transferring one ounce or less of marijuana and up to six immature
9 marijuana plants to a person who is 21 years of age or older without remuneration;

10 (4) consumption of marijuana, except that nothing in this chapter
11 **permits** [SHALL PERMIT] the consumption of marijuana in public; and

12 (5) assisting, **aiding, or supporting** another person who is 21 years of
13 age or older in any of the acts described in (1) - (4) of this section.

14 * **Sec. 2.** AS 17.38.210(a) is amended to read:

15 (a) A local government may prohibit the operation of marijuana cultivation
16 facilities, marijuana product manufacturing facilities, marijuana testing facilities, or
17 retail marijuana stores through the enactment of an ordinance or by a voter initiative.
18 **An established village may prohibit the operation of marijuana cultivation**
19 **facilities, marijuana product manufacturing facilities, marijuana testing facilities,**
20 **or retail marijuana stores as provided in AS 17.38.300.**

21 * **Sec. 3.** AS 17.38.210 is amended by adding a new subsection to read:

22 (m) Except as provided in AS 29, the exercise of the powers authorized by this
23 section by a borough may be exercised only on a nonareawide basis. In this
24 subsection, "nonareawide" means throughout the area of a borough outside all cities in
25 the borough.

26 * **Sec. 4.** AS 17.38 is amended by adding new sections to read:

27 **Sec. 17.38.300. Local option election by an established village.** (a) If a
28 majority of the voters voting on the question vote to approve the option, an established
29 village shall exercise a local option to prohibit the operation of one or more of the
30 following types of marijuana establishments:

31 (1) marijuana cultivation facilities;

- 1 (2) marijuana product manufacturing facilities;
- 2 (3) marijuana testing facilities; or
- 3 (4) retail marijuana stores.

4 (b) A ballot question to adopt a local option under this section must at least
5 contain language substantially similar to the following: "Shall (name of village) adopt
6 a local option to prohibit (specify local option under (a) of this section)? (yes or no)."

7 **Sec. 17.38.310. Removal of local option.** (a) If a majority of the voters voting
8 on the question vote to remove the option, an established village shall remove a local
9 option previously adopted under AS 17.38.300. The option is repealed effective the
10 first day of the month following certification of the results of the election.

11 (b) A ballot question to remove a local option under this section must at least
12 contain language substantially similar to the following: "Shall (name of village)
13 remove the local option currently in effect, that prohibits (current local option under
14 AS 17.38.300(a)), so that there is no longer any local option in effect? (yes or no)."

15 (c) When issuing a registration in the area that has removed a local option, the
16 board shall give priority to an applicant who was formerly registered and whose
17 registration was not renewed because of the results of the previous local option
18 election. However, an applicant described in this subsection does not have a legal right
19 to registration, and the board is not required to approve the application.

20 **Sec. 17.38.320. Effect on registrations of prohibition of marijuana**
21 **establishments.** If a majority of voters vote to prohibit the operation of marijuana
22 establishments under AS 17.38.300, the board may not issue, renew, or transfer,
23 between persons or locations, a registration for a marijuana establishment located
24 within the perimeter of the established village. A registration that may not be renewed
25 because of a local option election held under AS 17.38.300 is void 90 days after the
26 results of the election are certified. A registration that expires during the 90 days after
27 the results of a local option election are certified may be extended, until it is void
28 under this section, by payment of a prorated portion of the annual registration fee.

29 **Sec. 17.38.330. Prohibition of sale and manufacture after election.** (a) If a
30 majority of the voters vote to prohibit the operation of marijuana establishments under
31 AS 17.38.300, a person may not knowingly sell or manufacture marijuana in the

1 established village.

2 (b) If there are registered establishments within the established village, the
3 prohibition on sale and manufacture is effective beginning 90 days after the results of
4 the election are certified.

5 (c) Nothing in this section prohibits the personal conduct authorized in
6 AS 17.38.020.

7 (d) A person who violates this section is guilty, upon conviction, of a class A
8 misdemeanor. Each violation is a separate offense.

9 **Sec. 17.38.340. Procedure for local option elections.** (a) An election to adopt
10 a local option under AS 17.38.300 or remove a local option under AS 17.38.310 shall
11 be conducted as required in this section.

12 (b) Upon receipt of a petition of 35 percent or more of the registered voters
13 residing within an established village, the lieutenant governor shall place on a separate
14 ballot at a special election the local option or removal of local option that constitutes
15 the subject of the petition. The lieutenant governor shall conduct the election under
16 AS 15.

17 (c) An election under (b) of this section to remove a local option may not be
18 conducted during the first 24 months after the local option was adopted or more than
19 once in a 36-month period.

20 (d) After a petition has been certified as sufficient to meet the requirements of
21 (b) of this section, another petition may not be filed or certified until after the question
22 presented in the first petition has been voted on. A local option question to prohibit the
23 operation of marijuana cultivation facilities, marijuana product manufacturing
24 facilities, marijuana testing facilities, or retail marijuana stores or to prohibit all
25 marijuana establishments may be presented in one election.

26 **Sec. 17.38.350. Establishment of perimeter of established village.** (a)
27 Except as provided under (b) and (c) of this section, for purposes of AS 17.38.300 -
28 17.38.320, the perimeter of an established village is a circle around the established
29 village that includes an area within a five-mile radius of the post office of the
30 established village. If the established village does not have a post office, the perimeter
31 of an established village is a circle around the established village that includes an area

1 within a five-mile radius of another site selected by the local governing body or by the
2 board if the established village does not have a local governing body.

3 (b) If the perimeter of an established village determined under (a) of this
4 section includes any area that is within the perimeter of another established village
5 and, if the other established village has

6 (1) also adopted a local option under AS 17.38.300, the local option of
7 the established village that is less restrictive applies in the overlapping area;

8 (2) not adopted a local option under AS 17.38.300, the local option
9 does not apply in the overlapping area.

10 (c) If the board determines that the perimeter of an established village as
11 provided under (a) and (b) of this section does not accurately reflect the perimeter of
12 the established village, the board may establish the perimeter of the established village
13 and the areas of overlapping perimeter described under (b) of this section for purposes
14 of applying a local option selected under this chapter.

15 **Sec. 17.38.360. Notice of the results of a local option election.** If a majority
16 of the voters vote to adopt or remove a local option under AS 17.38.300 or 17.38.310,
17 the lieutenant governor shall notify the board of the results of the election immediately
18 after the results are certified. The board shall immediately notify the Department of
19 Law and the Department of Public Safety of the results of the election.

20 **Sec. 17.38.370. Bail forfeiture for certain offenses.** The supreme court shall
21 establish by rule or order a schedule of bail amounts that may be forfeited without
22 court appearance for a violation of AS 17.38.030 - 17.38.050.

23 * **Sec. 5.** AS 17.38.900 is amended by adding new paragraphs to read:

24 (17) "dwelling" has the meaning given in AS 11.81.900;

25 (18) "established village" means an area that does not contain any part
26 of an incorporated city or another established village and that is an unincorporated
27 community that is in the unorganized borough and that has 25 or more permanent
28 residents;

29 (19) "manufacture" has the meaning given in AS 11.71.900.

30 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

LOCAL GOVERNMENT IN ALASKA

prepared by Local Boundary Commission Staff
Alaska Department of Community and Economic Development
updated March 2004

Section 1 – Alaska has just two types of municipal government – cities and organized boroughs.

Unlike most other states that typically have local government structures consisting of many overlapping local government service providers, Alaska's system of local government is simple, efficient, and effective. It consists of just two types of municipal government as described below.

A. Cities.

Federal law did not allow the incorporation of city governments in Alaska until 1900. The City of Skagway was the first city government incorporated in Alaska.

A city government is a municipal corporation and political subdivision of the State of Alaska. City governments are subject to the "limitation of community" doctrine. (See *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 100 (Alaska 1974).) The doctrine requires the area taken into the boundaries of a city to be urban or semi-urban in character.

On average, the corporate boundaries of cities in Alaska encompass just over 27 square miles. However, there are wide variations in the size of individual cities. The City of Skagway encompasses the largest area (466 square miles), while the City of Kiana encompasses the smallest area (0.3 square miles).

Current State law restricts the inclusion of large geographical regions or large unpopulated areas in cities. [3 AAC 110.040(b) - (c); 3 AAC 110.130(c) - (d)]. A city is part of the borough in which it is located. [Art. X, § 7, Ak. Const.]

Presently, there are 145 city governments in Alaska. In 2003, those cities were inhabited by 159,255 individuals or 24.5 percent of Alaska's total population of 648,818.

The 2003 population of cities ranged from a high of 29,486 (City of Fairbanks) to a low of 30 (City of Kupreanof).

B. Organized Boroughs.

Prior to statehood, federal law prohibited the creation of counties in Alaska

Like a city, an organized borough in Alaska is a municipal corporation and political subdivision of the State of Alaska. However, organized boroughs are regional governments – much larger than cities.

Article X, Section 3 of Alaska's Constitution requires that the entire state be divided into boroughs, organized or unorganized. It also requires that each borough embrace a maximum area and population with common interests.

Article X, § 1 of Alaska's Constitution calls for minimum numbers of local governments. Together, Sections 1 and 3 of Article X promote large boroughs embracing natural regions.

Presently, there are 16 organized boroughs in Alaska. On average, organized boroughs encompass just over 17,400 square miles (644 times the average size of cities). Like cities, the size of individual organized boroughs varies considerably. The largest organized borough is the North Slope Borough (94,770 square miles), while the Bristol Bay Borough is the smallest (850 square miles)



In 2003, Alaska's 16 organized boroughs were inhabited by 567,343 individuals, or 87.4 percent of the total population of the state. Of the 567,343 residents of organized boroughs in Alaska, 97,044 (17.1 percent) also lived within a city government during 2003.

Organized boroughs encompass about 43 percent of the geographic area of Alaska. State law provides that the part of Alaska outside organized boroughs comprises a single unorganized borough. As it is presently configured, the unorganized borough encompasses 374,843 square miles. The unorganized borough was inhabited by 81,475 residents in 2003. Additional information about the unorganized borough is provided later in this publication.

Section 2 – Classification of Cities and Boroughs.

A. Cities.

There are three different classifications of city governments in Alaska – home-rule, first-class, and second-class cities. A community must have at least 400 permanent residents to form a home-rule or first-class city.

First and second-class cities are general law cities – State law defines their powers, duties, and functions. General law is distinct from home-rule. Home-rule cities have all legislative powers not prohibited by law or charter. Details about the differences between the two types of government are provided in Section 3.

Table 1 lists the number of cities of each classification and indicates whether those cities are inside or outside an organized borough. The classification and location of cities are significant in terms of the powers and duties of city governments in Alaska as addressed in Section 3.

Classification	Within Organized Boroughs		Within the Unorganized Borough		Total	
	Number of Cities	2003 Population	Number of Cities	2003 Population	Number of Cities	2003 Population
Home-rule Cities	7	60,604	5	12,124	12	72,728
First-class Cities	7	22,068	13	16,733	20	38,801
Second-class Cities	34	14,372	79	33,354	113	47,726
Total	48	97,044	97	62,211	145	159,255

B. Organized Boroughs.

The word “borough” has its origins in 5th century Europe. It means “place organized for local government purposes.” A number of countries and a number of states in the US have boroughs; however, they are unlike boroughs in Alaska.

There are five different classifications or types of organized boroughs in Alaska. These are unified home-rule, non-unified home-rule, first-class, second-class, and third-class.¹ First, second, and third-class boroughs are general law governments.

Table 2 lists the number of boroughs according to classification. Details about the distinctions among the different classifications of boroughs are provided in Section 3.

Classification	Number	2003 Population
Unified Home-rule	3	314,177
Non-unified Home-rule	6	21,095
First-class	0	0
Second-class	7	232,071
Third-class	0	0
Total	16	567,343

¹ A “unified municipality” is an organized borough (unified home rule borough). A unified municipality is defined as such by the Local Boundary Commission in 3 AAC 110.990(1). Alaska’s Constitution recognizes only two types of municipalities, cities and boroughs (Art. X, Sec. 2). The legislature consistently treats unified municipalities as boroughs. For example, State statutes utilize the same standards for incorporation of a borough as they do for incorporation of a unified municipality (AS 29.05.031). By contrast, the legislature has established separate standards for incorporation of a city (AS 29.05.011). Newly formed unified municipalities and boroughs are entitled to identical organization grants and other transitional assistance (AS 29.05.190; 29.05.210), whereas newly formed cities are entitled to substantially lower levels of organization grants and different transitional assistance. AS 29.06.410 describes the powers of a unified municipality to include all powers granted to a home-rule borough. Additionally, all of the existing unified municipalities in Alaska recognize themselves as boroughs in that each is governed by an assembly. Art. X, Sec. 4 of Alaska’s Constitution reserves the term “assembly” for the governing body of a borough, whereas Art. X, Sec. 8 of Alaska’s Constitution reserves the term “council” for the governing body of a city. Lastly, none of the unified municipalities exhibits characteristics that are exclusive to city governments.

While the third-class borough classification remains in law, there are no third-class boroughs. Moreover, State law expressly prohibits the formation of new third-class boroughs. Therefore, this publication does not address the powers of a third class borough or other aspects of a third class borough.

Section 3 – Alaska’s Cities and Organized Boroughs – both General Law and Home-rule – Enjoy Broad Powers.

A. Provisions Applicable to all Local Governments in Alaska.

Article X of Alaska’s Constitution establishes the framework for local government in Alaska. Section 1 of the local government article states the following with respect to the purpose and construction of the constitutional provisions regarding local government:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. *A liberal construction shall be given to the powers of local government units.* (emphasis added)

All local governments in Alaska – general law cities, home-rule cities, general law boroughs, and home-rule boroughs – enjoy broad powers. The Alaska Supreme Court has noted with respect to the constitution provision for a liberal construction of the powers of local government as follows:

The constitutional rule of liberal construction was intended to make explicit the framers’ intention to overrule a common law rule of interpretation which required a narrow reading of local government powers.²

² The rule, called Dillon’s rule states:

[a] municipal corporation possesses and can exercise the following powers and not others. First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.

Merriam v. Moody’s Executors, 25 Iowa 163, 170 (1868). The minutes of the constitutional convention reveal that the liberal construction clause of Article X, Section 1 was intended to assure that general law municipalities, as well as those having home-rule powers, would not be governed by this rule, but would have their powers liberally interpreted. The following colloquy between delegates Hellenthal and Victor Fischer is illustrative:

HELLENTHAL: Is there a compelling reason for the retention of the last sentence in the section?

V. FISCHER: Mr. President, we were advised by our committee consultants that due to the fact that in the past, courts have very frequently, or rather generally interpreted the powers of local government very strictly under something called “Dillon’s Rule”, or something like that, that a statement to this effect was rather important, particularly in connection with the local government provisions of the article to make sure that it would be interpreted to give it the

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

B. General Law Cities and Boroughs.

As noted in Section 2, general law local governments derive their powers from laws enacted by the State legislature. The constitutional principle of liberal construction of local government powers is reflected in the laws enacted by the legislature granting powers to general law governments. Among the statutes are the following provisions:

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title.

In 1983, the Alaska Supreme Court addressed Article X, Section 1 along with the similar version of the two statutes noted above that was in effect at the time. The Court concluded that a second-class (general law) borough had powers beyond those expressly stated in law. Specifically, the Court concluded that even though State statutes did not specifically authorize a second-class borough to dispose of land by lottery, that power was "fairly implied." (*Gilman v. Martin*, 662 P.2d 120, 124 [Alaska 1983])

In reaching its conclusion that a general law government had implied powers, the court cited the irreconcilable conflict rule that it utilized in *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974). The court made no distinction as to the deference due to an enactment by a home-rule municipality as compared to an enactment by a general law municipality. The application of the irreconcilable conflict rule in *Gilman v.*

maximum amount of flexibility that we desire to have in it and to provide the maximum powers to the legislature and to the local government units to carry out the intent of this article.

....

HELLENTHAL: Now I refer to Section 11. Doesn't Section 11 clearly reverse this rule that you refer to as Dillon's Rule?

V. FISCHER: That would apply to home rule, cities and boroughs, but the point is that there may be a lot of local government units in Alaska over the years that may not be granted the home rule authority by the legislature and it may not want to adopt a home rule charter. Alaska Constitutional Convention Proceedings, Part 4, 2690 – 96.

Martin clearly enhanced the powers of general law municipalities in Alaska.

Those powers were further enhanced to a great degree in 1985 when the State legislature eliminated the enumerated list of regulatory powers of general law municipalities (former AS 29.48.035) and the enumerated list of authorized facilities and services of general law municipalities (former AS 29.48.030). The enumerated lists of powers were replaced with the broadest possible grant of powers to general law municipalities; i.e., "...any power not otherwise prohibited by law." [AS 29.35.200(a) & (c); 210(c) & (d); 220(d); 250(a); 260(a)]

The statutory grant of powers to general law municipalities has no general limitations such as '...any municipal power' or ...'any local government power' which would imply that the granted powers were limited to those that the court might think of as typical or appropriate local government powers. Finding such an implied limitation would be difficult in light of the language of Article X, § 1, *Liberati v. Bristol Bay Borough*, *Gilman v. Martin*, and the literal language of the statutory grant of powers.

Similarly, it may be relevant that the second sentence of Article X, § 1 reads "A liberal construction shall be given to the powers of local government units" instead of, "A liberal construction shall be given to local government powers." The latter implies that there is some definition or judicial understanding of what constitutes local government powers and invites a court to define what is encompassed by the term before it applies a liberal construction to the power being questioned. If it is not typically a "local government power" as envisioned by the courts across the nation, then the court need not apply a liberal construction to it. The actual language of Alaska's Constitution does not lend itself as easily to such an interpretation and, coupled with the language of the Title 29 grants ("any power not otherwise prohibited by law"), would make it difficult for a court (in a well briefed case) to resort to limiting Alaska municipal powers to common understandings of what powers are traditional municipal powers.

As a practical matter, under the present language of Title 29, the nature of the powers to which a general law municipality has access are substantially the same as those to which a home-rule municipality has access, bearing in mind the specific Title 29 limitations that apply to general law municipalities.

C. Distinctions Among General Law Boroughs.

A principal distinction between a first-class borough and a second-class borough relates to the authority to assume powers. A first-class borough may exercise any power not prohibited by law on a non-areawide basis (i.e., in the area of the borough outside cities) by adopting an ordinance. In contrast, a second-class borough must gain voter approval for the authority to exercise many non-areawide powers.

D. Home-Rule Cities and Boroughs.

While general law local governments in Alaska have broad powers, home-rule local governments have even greater powers. Article X, Section 11 of Alaska's Constitution provides that:

A home-rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Adoption of a home-rule charter promotes maximum local self-government to the greatest extent possible. Tom Morehouse and Vic Fischer, recognized experts in Alaska local government, wrote the following account of the views of the constitutional convention delegates with regard to this matter:



Committee on Local Government meeting during the Alaska Constitutional Convention, February 1956

An oft-repeated theme of the [Alaska Constitutional] convention, and one of the stated purposes of the local government article, was provision of maximum local self-government to the people of Alaska. . . . Home rule was held to be the vehicle for strengthening both state and local governments by permitting the people to deal with local problems at the local level. It was also to be the means for promoting local government adaptation in a state with great variations in geographic, economic, social, and political

conditions.

This home rule philosophy was not believed to be inconsistent with a strong state role in local affairs. As the above discussion indicates, the exercise of state authority was considered essential in matters of incorporation and boundaries, i.e., the creation of local governments and their areas of jurisdiction were

felt to be matters ultimately of state responsibility. When properly established, however, their internal organization and operations were to be primarily local concerns, particularly in the case of home rule units. Moreover, a “strong state role” also meant that the state would support local governments with financial aid and technical assistance.

Before Alaska became a state, there was little self-determination either at territorial or local levels. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government that could be established and restricting the powers that could be exercised by incorporated cities. Throughout its deliberations, therefore, the Local Government Committee emphasized the need for effective constitutional provisions for home rule.

(Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, p. 56 [1971].)

In 1963, the Alaska Supreme Court ruled as follows:

By constitutional provision cities have “the powers and functions conferred by law or charter.” (footnote omitted) The meaning of this provision is that where a home rule city is concerned the charter, and not a legislative act, is looked to in order to determine whether a particular power has been conferred upon the city. It would be incongruous to recognize the constitutional provisions stating that a home rule city “may exercise all legislative powers not prohibited by law or by charter” and then to say that the power of a home rule city is measured by a legislative act.”

(*Lien v. City of Ketchikan*, 383 P.2d 721, 723 [Alaska 1963])

In 1974, the Alaska Supreme Court ruled that the prohibitions referred to in Article X, Section 11 can be either in express or implied terms. Specifically, the Court stated:

The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded with weight of law.

(Jefferson v. State, 527 P.2d 37, 43 [Alaska, 1974])

There are 138 sections of the current Alaska Statutes that specifically refer to home-rule local governments. Most of those (106) are found in Title 29 of the Alaska Statutes dealing with municipal government. The remaining 32 are scattered in 20 other titles of the Alaska Statutes.

Section 4. The Duties of Cities and Boroughs Depend Upon Classification. City Duties also vary in terms of Location Within or Outside of Organized Boroughs.

All local governments have certain fundamental duties such as conducting elections and holding regular meetings of the governing bodies. Beyond this, the duties of municipalities in Alaska vary considerably.

All organized boroughs as well as home-rule and first-class cities in the unorganized borough must operate municipal school districts. Second-class cities in the unorganized borough and cities in organized boroughs are not authorized to do so.

All organized boroughs, along with home-rule and first-class cities in the unorganized borough must also exercise planning, platting, and land use regulation. Second-class cities in the unorganized borough are permitted, but not required, to exercise those powers. Home-rule, first-class, and second-class cities in organized boroughs may exercise planning, platting, and land use regulation powers only if those powers have been delegated to them by the borough.

Organized boroughs also have the duty to collect municipal property, sales, and use taxes levied within their boundaries.

Otherwise, municipal powers are exercised at the discretion of local governments. Second-class cities are not obligated by law to provide any particular service.

Organized boroughs may provide services on three jurisdictional levels. These are (1) areawide (i.e., throughout the entire borough); (2) nonareawide (i.e., in that part of the borough outside of cities); and (3) service area (the size and configuration of service areas may vary, they may even include territory within the boundaries of city governments under certain circumstances).³

³ "Service area" means an area in which borough services are provided that are not offered on an areawide or nonareawide basis, or in which a higher or different level of areawide or nonareawide services are provided. Borough service areas are not local governments, service area boards lack legislative and executive powers.

Alaska's Constitution (Article X, § 5) and Alaska Statutes (AS 29.35.450) prohibit the creation of new service areas if services can be provided by an existing service area, annexation to a city, or incorporation of a new city.

Tables 3 and 4 provide additional information concerning the powers and duties of the various types of cities and boroughs.

Section 5 – The Unorganized Borough is Unlike an Organized Borough.

Unlike cities and organized boroughs, the unorganized borough is not a municipal corporation or political subdivision of the State of Alaska.

Unorganized boroughs were intended to serve as a means to decentralize State services and to foster local participation in the administration of state programs within regions not ready or suited for organized borough status.

Art. X, § 6 of Alaska's Constitution stipulates that, "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough."

To ostensibly carry out the constitutional mandate that the entire state be divided into boroughs, organized or unorganized, the 1961 Legislature enacted a law providing that all areas not within the boundaries of an organized borough constitute a single unorganized borough. (AS 29.03.010)

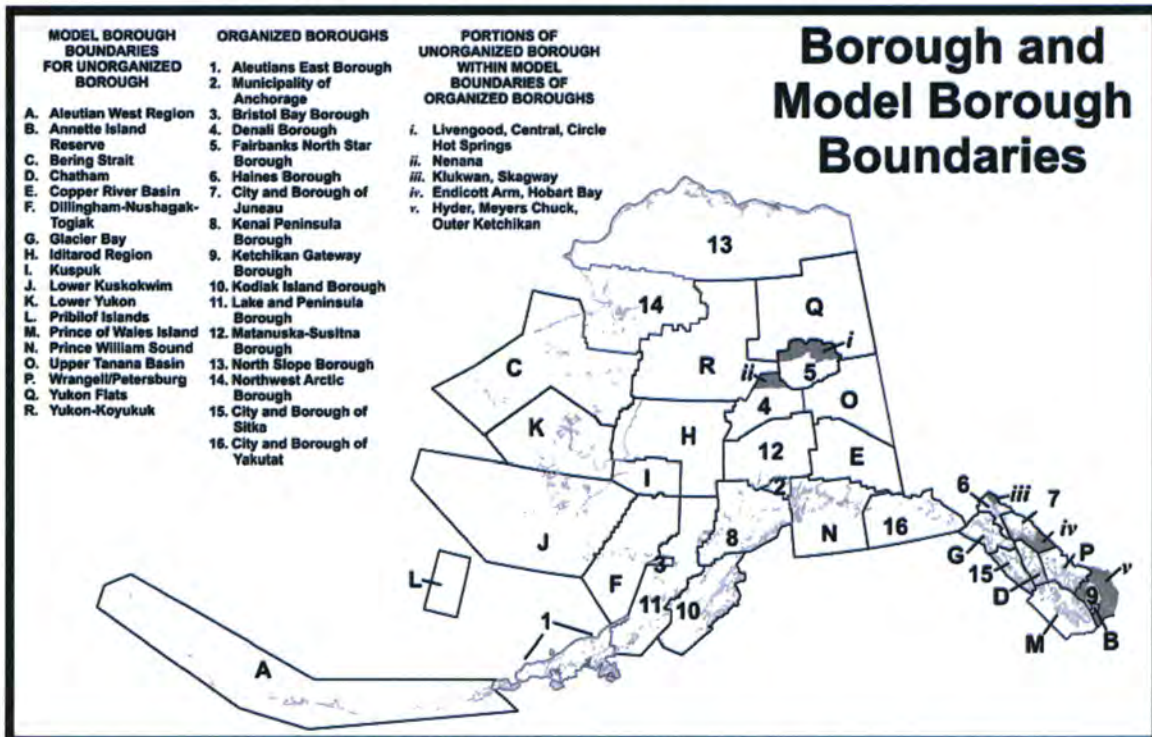
The Local Boundary Commission has stressed repeatedly over many years that, given the size and diversity of unorganized areas of Alaska, a single, residual unorganized borough falls far short of the constitutional intent regarding borough boundaries.⁴ In 1990, the Commission initiated an effort to define the unorganized borough in terms of model boundaries based on constitutional, statutory, and regulatory boundary standards for borough incorporation. The Commission's work was completed at the end of 1992.

⁴ Most recently, the LBC recently expressed the view that the 1961 law creating the single residual unorganized borough, "disregarded the constitutional requirement that each borough must embrace an area of common interests." , Local Boundary Commission and Department of Education and Early Development, *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*, February 2004, p. 30.

Funding for the project was provided by the Legislature. In the course of the effort, the LBC held hearings involving 88 communities. Since 1992, the model borough boundaries have been modified twice.⁵

Currently, 18 different model boroughs are defined in the unorganized borough. In addition, the Commission identified five parts of the unorganized borough that have greater social, cultural, economic, geographic, transportation, and other relevant ties to existing organized boroughs vis-à-vis any of the 18 model boroughs in the unorganized borough.

A map showing the 16 organized boroughs, 18 model boroughs, and 5 parts of the unorganized borough with ties to organized boroughs is provided below.



The legislature has enacted two key provisions to allow for local participation and responsibility in the delivery of State services in the unorganized borough. These are described below.

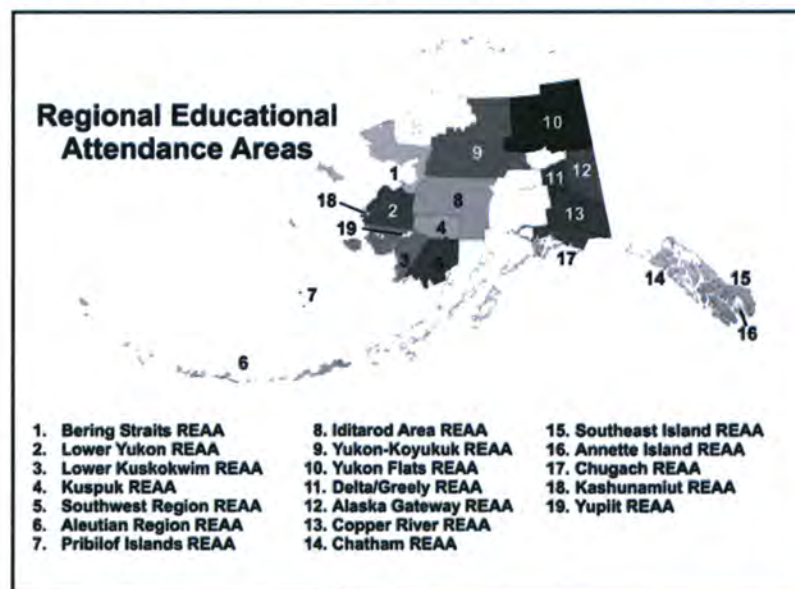
⁵ The first modification occurred to the boundaries of the Prince William Sound Model Borough, which were reduced as a result of an annexation to the adjoining City and Borough of Yakutat. The second modification occurred when the LBC merged the former "Aleutian-Military Model Borough" into the "Aleutians West Region Model Borough" in December 2002, during the course of a study of the unorganized borough. (See: Local Boundary Commission, Unorganized Areas of Alaska that Meet Borough Incorporation Standards, February 2003, p. 69.)

Regional educational attendance areas (REAs) are state service areas to provide public education to the unorganized borough, except within home-rule and first-class cities. The 1975 legislature required the then Department of Community and Regional Affairs, in consultation with the then Department of Education and local communities, to divide the unorganized borough into educational service areas. The criteria used to establish the boundaries of REAs are similar in many respects to the criteria for setting boundaries of organized boroughs. [AS 14.08.031] In a number of instances, the model borough boundaries set by the Local Boundary Commission in 1990-1992 follow the boundaries of REAs.

Initially, 21 REAs were established. These were: Adak, Alaska Gateway (headquartered in Tok), Aleutian Region, Annette Island, Bering Straits, Chatham (headquartered in Angoon), Chugach (serving Prince William Sound), Copper River, Delta/Greely, Iditarod Area, Kuspuk, Lake and Peninsula, Lower Kuskokwim, Lower Yukon, Northwest Arctic, Pribilof Islands, Railbelt, Southeast Island, Southwest Region, Yukon Flats, and Yukon-Koyukuk.

In 1985, Bureau of Indian Affairs stopped funding schools in Akiachak, Akiak, Tuluksak, Chevak and Chefnak. The 1985 Legislature passed a law allowing the formation of two “federal transfer regional educational attendance areas” to assume the operation of those schools, subject to voter approval.

Voters in Chevak approved the proposition to form the Kashunamiut Federal Transfer REAA. Voters in the other communities, except Chefnak, also approved the proposition to form the Yupiit Federal Transfer REAA.



Since the mid-1970s, five organized boroughs have formed. The formation of the Northwest Arctic Borough, Lake and Peninsula Borough and Denali Borough, resulted in the dissolution of the REAAs in those areas.

In the case of the other two new boroughs, the Aleutians East Borough and the City and Borough of Yakutat took in only portions of the REAAs in those regions. Thus, in those two instances, the REAAs remained in existence.

On July 1, 1997, the Adak REAA was merged into the Aleutian Region REAA.

Coastal resource service areas (CRSAs) are unorganized borough service areas that were created to perform certain duties under the Alaska Coastal Management Program (AS 46.40.110 - 46.40.180). In 2003, AS 46.40.110 was enacted to prohibit the formation of new CRSAs. A CRSA develops a coastal management plan for the area within its boundaries. A CRSA gives a region the opportunity to influence the management of coastal resources by recommending conditions on consistency determinations based on a CRSA's coastal management plan. The State may implement the plan through the State permitting process.

There are four CRSAs in the unorganized borough. They are the Bristol Bay CRSA, the Aleutians West CRSA, the Cenaliuriiit CRSA and the Bering Straits CRSA.

The Bristol Bay CRSA conforms to the boundaries of the Southwest Region REAA and includes the first-class City of Dillingham.

The Aleutians West CRSA generally has the same boundaries as the Aleutian Region REAA and includes the first-class City of Unalaska. However, Adak, which was merged into the Aleutian Region REAA on July 1, 1997, has not yet been incorporated into the Aleutians West CRSA.

The Cenaliuriiit CRSA generally encompasses two REAAs (Lower Yukon and Lower Kuskokwim) and two Federal Transfer REAAs (Kashunamiut and Yupiit) REAAs. The Cenaliuriiit CRSA excludes the second-class City of Bethel.

The Bering Straits CRSA conforms to the boundaries of the Bering Straits REAA. The first-class City of Nome is excluded from that CRSA.

Salmon Production Regional Associations.

AS 16.10.380 provides that a qualified salmon production regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area

in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services.

Other Service Areas in the Unorganized Borough.

AS 29.03.020. provides that the legislature may establish, eliminate, or change service areas of the unorganized borough. Specifically, it provides that:

Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, that may include but are not limited to schools, utilities, land use regulations, and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

Other Entities

Other entities may be established under State or federal law to provide public or quasi-public services to residents of Alaska. They include; tribal governments, port authorities, local emergency planning committees, soil and water conservation districts, regional housing authorities, civil defense districts, consolidated health districts, telephone and electrical cooperatives, historical districts, grazing districts public utility districts, registration districts and local improvement districts. It is beyond the scope of this discussion to provide details about these other entities other than to recognize their existence.

**TABLE 3
POWERS AND DUTIES OF CITIES**

POWERS AND DUTIES	HOME-RULE CITY	FIRST-CLASS CITY	SECOND-CLASS CITY	REFERENCES
Public Education	If the city is in the unorganized borough it must provide the service in accordance with AS 14. A home-rule city is not permitted to do so within organized boroughs.	Same as for a home-rule city.	The city is not allowed to provide the service under any circumstance.	AS 29.35.260(b) AS 14.12.010 AS 14.12.025
Planning, Platting & Land Use Regulation	If the city is in the unorganized borough, it must exercise the powers. If it is in an organized borough, it may be permitted by borough to exercise the powers.	Same as for a home-rule city, except the power must be exercised in accordance with AS 29.40.	The city is not required to exercise the powers in any circumstance, but may be permitted in all cases in the manner described for first-class cities.	AS 29.35.250(c) AS 29.35.260(c)
Property Tax	The city may tax up to 30 mills, except where a higher levy is necessary to avoid default on debt. Some home-rule charters require voter approval to authorize the levy property taxes.	The city may tax up to 30 mills except where a higher levy is necessary to avoid default on debt. Voter approval is not required under State law, however, some general law municipal governments have more restrictive limitations imposed at the local level.	The city may tax up to 20 mills, except where a higher levy is required to avoid default. Voter approval is required.	AS 29.45.550- AS 29.45.590;
Sales Tax	The rate of levy may be limited by charter. Requirements for voter approval may also be set by charter	There is no limit on the rate of levy of sales taxes; however, voter approval is required.	Same as for a first-class city.	AS 29.45.700
Other Powers	Possess all legislative powers not prohibited by law or charter	May exercise other powers not prohibited by law	May exercise other powers not prohibited by law	Art. X, § 11 Ak. Const.. AS 29.35.250
City Council composition and apportionment	Determined by charter or ordinance.	6 members elected at-large, except the council may provide for election other than at-large.	7 members elected at-large, except the council may provide for election other than at-large.	AS 29.20.130
Election and Term of Mayor	Determined by charter or ordinance.	Elected at large for a 3-year term, unless a different term not to exceed 4 years is provided by ordinance.	Elected from the city council for a 1-year term, unless a longer term is provided by ordinance. Mayor is selected by council (or by voters upon adoption of ordinance)	AS 29.20.230 AS 29.20.240

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**TABLE 3 - Continued
POWERS AND DUTIES OF CITIES**

POWERS AND DUTIES	HOME-RULE CITY	FIRST-CLASS CITY	SECOND-CLASS CITY	REFERENCE
Vote by Mayor	Determined by charter or ordinance.	May vote to break a tie vote on the city council.	Votes on all matters.	AS 29.20.250
Veto Power of the Mayor	Determined by charter or ordinance, except veto is not permitted of ordinance prohibiting possession of alcohol.	Has veto power with the same exception noted for home-rule cities.	Has no veto power.	AS 29.20.270
Power of Eminent Domain	Permitted by statute.	Permitted by statute.	Permitted, but requires voter approval.	AS 29.35.030
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	May not adopt home-rule charter without first reclassifying to a first-class city.	AS 29.10.010

**TABLE 4
POWERS AND DUTIES OF ORGANIZED BOROUGHS**

POWER	UNIFIED MUNICIPALITY AND HOME-RULE BOROUGH	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Public Education	The borough or unified municipality must provide the service areawide in accordance with AS 14.	Same as for a home-rule borough.	Same as for a home-rule borough.
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first-class borough.
Provide Transportation Systems, Water & Air Pollution Control, Animal Regulation	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide or nonareawide basis by ordinance; approval from voters or property owners required for service area powers.
License Day Care Facilities	Determined by charter or ordinance.	May be exercised on an areawide, nonareawide or service area basis by ordinance.	May be exercised on an areawide basis by ordinance; voter approval required for exercise on a nonareawide or service area basis.
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a nonareawide basis; may be exercised on a service area basis with voter approval
Hazardous Substance Control	Determined by charter or ordinance	Same as above.	Same as above.
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of nonareawide voters; may be exercised nonareawide upon approval of nonareawide voters; may be exercised on a service area basis with voter approval

Table continued on next page

**TABLE 4 - Continued
POWERS AND DUTIES OF ORGANIZED BOROUGHs**

POWER	UNIFIED MUNICIPALITY AND HOME-RULE BOROUGH	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters	Same as home-rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first-class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first-class borough.
Assembly composition and apportionment	Flexible; determined according to AS 29.20.060 - 29.20.120	Same as for a home-rule borough.	Same as for a home-rule borough.
Election and Term of Mayor	Established by charter or ordinance.	Elected at large for a 3 year term, unless a different term not to exceed 4 years is provided by ordinance.	Same as for a first-class borough.
Vote by Mayor	Established by charter or ordinance.	may vote to break a tie vote only if the borough has a manager form of government	Same as for a first-class borough.
Veto Power of the Mayor	Generally determined by charter, except veto not permitted of ordinance prohibiting possession of alcohol.	generally has veto power, except veto not permitted of ordinance prohibiting possession of alcohol.	Same as for a first-class borough.
Ability to Attain Home-rule Status	Already has home-rule status.	Voters may adopt home-rule charter.	Same as for a first-class borough.

POPULATION CHARACTERISTICS OF MUNICIPAL GOVERNMENTS IN ALASKA

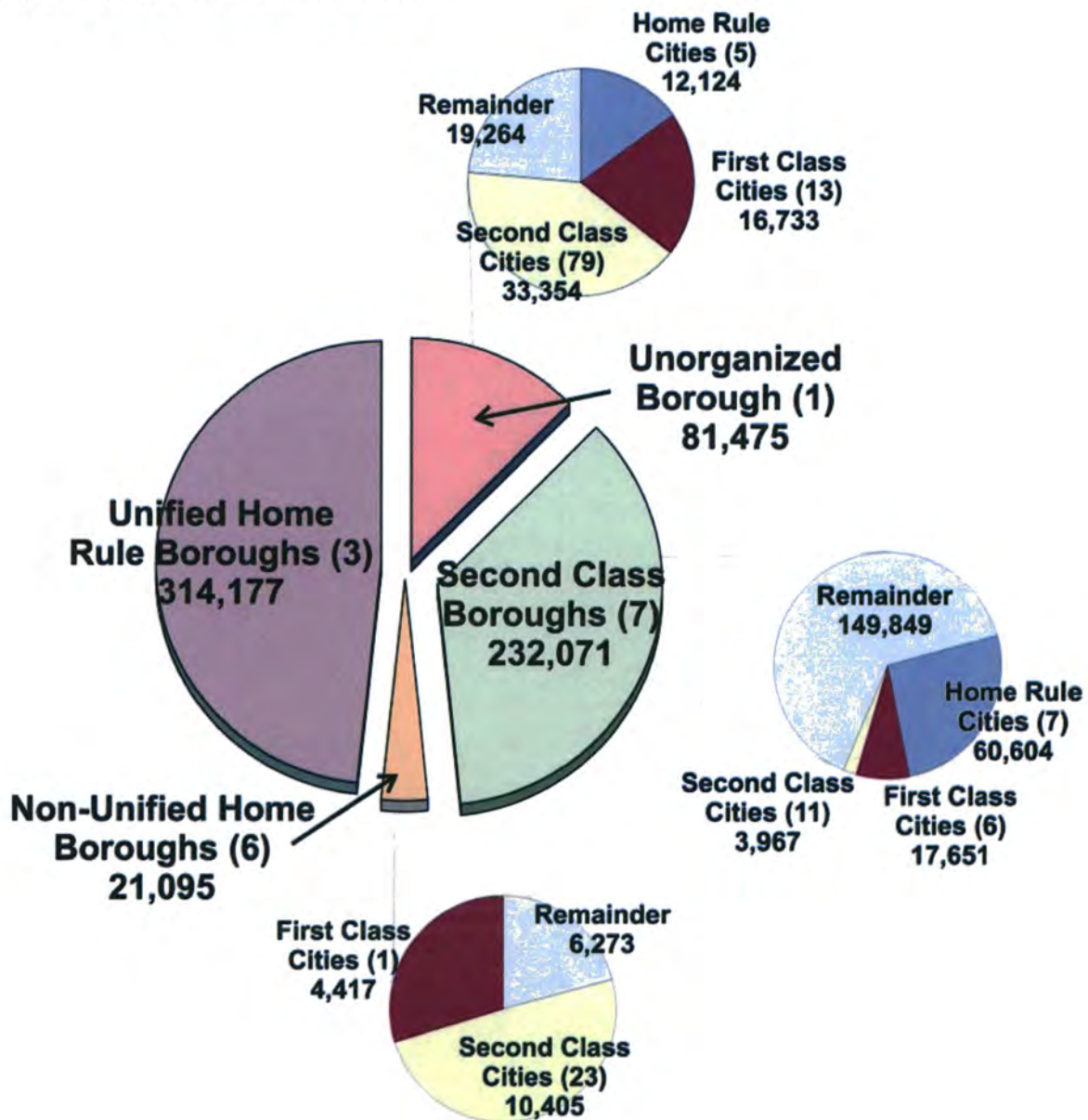
(based on July 1, 2003 population figures)

97.0 percent of Alaskans live in at least one municipal government; the remaining 3.0 percent live outside a municipal government

87.4 percent of Alaskans live within organized boroughs; the remaining 12.6 percent live in the unorganized borough

82.9 percent of organized borough residents receive municipal services exclusively from their borough; the remaining 17.1 percent receive municipal services from their city government and their borough.

91.9 percent of Alaskans live in municipal school districts (organized boroughs and home rule and first class cities in the unorganized borough); the remaining 8.1 percent of Alaskans live in regional educational attendance areas





Fairbanks North Star Borough

Department of Law

809 Pioneer Road • PO Box 71267 • Fairbanks, AK 99707 - (907) 459-1318 FAX 459-1155

January 30, 2015

Via email: heath.hilyard@akleg.gov

Heath Hilyard

Chief of Staff to Rep. Cathy Tilton

State Capitol Room 411

Juneau, Alaska 99801

Dear Mr. Hilyard:

The following is in response to your request for municipal input regarding Alaska's new marijuana laws, enacted at AS 17.38. Initially, please allow me to thank you, on behalf of the Fairbanks North Star Borough ("FNSB"), for soliciting our input and allowing our community to have a voice in this process. What follows is initial input from FNSB's administration and, in particular, the views of FNSB's Mayor, Luke Hopkins. The opinions expressed herein do not necessarily reflect the view of the FNSB Assembly.

Of initial note and of utmost importance, FNSB would like to ultimately see laws and regulations that grant maximum authority and control to be exercised at the local level. In what follows, I will address the specific questions you posed in your email dated January 26, 2015 and will then provide input from the FNSB on other topics.

1. ALTERNATIVE DEFINITION FOR "PUBLIC USE" OR "IN PUBLIC."

The definition of "public" as used in AS 17.38 was one of the first points of concern identified by the FNSB with the Act as currently written. It is the FNSB's position that, because the personal use provisions of the Act will go into effect on February 24, 2015, and because those provisions prohibit the consumption of marijuana in "public," implementing an enforceable and understandable definition of "public" is of utmost importance.

Unfortunately, simply defining "public" is not as straightforward as it might seem at first glance. There is a problem with the repeated use of the word "public" in different contexts of the Act. For instance, the word "public" is used to ban the consumption of marijuana in public¹ and it is also used to state that cultivated marijuana must remain out of "public view,"² and that it cannot be visible to the "general public from a public right-of way."³

¹ AS 17.38.020(d) and 17.38.040.

² AS 17.38.030(a)(1).

³ AS 17.38.070(a)(1).

This language creates two options: 1. Redraft the Act's language to more artfully reflect what is intended by the initiative without using the word "public" in several different ways. 2. Define "public" specifically and expressly for the purposes of AS 17.38.020 and 17.38.040, then separately define what "public view" means, what "general public" means, and what "public right-of-way" means. Option 1 appears to be the more efficient of the two options and suggested language is presented below.

Sec. 17.38.020. Personal use of marijuana.

(d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public;

Sec. 17.38.030. Restrictions on personal cultivation, penalty.

(a) The personal cultivation of marijuana described in AS 17.38.020(b) is subject to the following terms:

(1) Marijuana plants shall be cultivated in a location where the plants are not subject to public view from a highway without the use of binoculars, ~~aircraft~~, or other optical aids, including aircraft.

Sec. 17.38.040. Public consumption banned, penalty.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

(a) Notwithstanding any other provision of law, the following acts... are lawful...:

(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 highway, sidewalk, or similar location ~~public right-of-way~~;

Add a definition that "highway" has the meaning set forth in AS 11.81.900(30).⁴

Add a definition that, for the purposes of AS 17.38, "public" means a place to which the people as a whole or a substantial group of persons has access without restriction and includes, but is not limited to, any building that used by or open to the people as a whole or a substantial group of persons, in or upon any highway as defined by AS 11.81.900(30), whether in a vehicle or not, sidewalks, rivers, lakes, parks, convention centers, shopping centers, transportation facilities, school facilities, correctional facilities, lobbies, doorways and other portions of apartment buildings and hotels that are not designed for actual dwelling or residence, any outdoor location where the consumption of marijuana is clearly observable from the foregoing public places, and any location similar to those

⁴ AS 11.81.900(30) defines highway as follows: "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities.

places delineated herein. Notwithstanding the foregoing, a location with proper licensure in place pursuant to AS 17.38 and that is in compliance with applicable municipal ordinances, including municipal licensure requirements, if any, and that is operating within the restrictions of such licensure is not a public place within the meaning of AS 17.38.

**2. ADDRESS POINT 8 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"ALLOWING LOCAL OPTION EQUIVALENT TO TITLE 4 LOCAL OPTIONS IN TWO YEARS."**

Although the FNSB does not at this time intend to exercise a local option to ban either commercial marijuana facilities as allowed currently, nor to ban personal possession and consumption if that option were available in two years, the FNSB does support the proposition that local communities should have maximum control over such decisions. As such, the FNSB would support amending AS 17.38 in two years to allow local governments to opt-out and make their communities "dry" from marijuana in the same way communities may be made "dry" from alcohol.

**3. ADDRESS POINT 9 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"MARIJUANA USE IN SO-CALLED 'PRIVATE' CLUBS."**

The FNSB would like the decision of whether to allow marijuana consumption bars or private, members-only marijuana consumption clubs to be made at the municipality level, based on what each municipality determines is in the best interests of their constituents.

The FNSB does not object to the state creating a basic structure under which such consumption facilities would be regulated at the state level, so long as the municipalities can choose to ban such facilities or regulate them more restrictively at the local level. The FNSB believes that such facilities should be prohibited from serving alcohol or allowing the consumption of alcohol on such marijuana consumption facility premises.

The FNSB is aware that, in combination with Colorado's marijuana laws and its Clean Indoor Air Act, at least one legal, licensed marijuana consumption club⁵ has been able to open. To FNSB's understanding, this club is for members only and is not open to the public, thus skirting the no-consumption-in-public ban, it ensures that the consumption activities inside the club are not viewable from the outside, and it employs no more than three employees, which skirts Colorado's Clean Indoor Air Act, which bans smoking in any location that employs more than three people. This type of private consumption club is potentially acceptable to the FNSB, so long as the club is properly licensed under AS 17.38 and any municipal licensure scheme.

⁵ ClubNed Café's website is found at www.clubnedcafe.com. An article outlining ClubNed's venture through Colorado's regulatory process can be found at <http://www.forbes.com/sites/jacobsullum/2014/03/11/colorado-couple-to-open-first-officially-approved-cannabis-club>.

**4. ADDRESS POINT 10 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"DEFAULT PROVISIONS REGARDING A 'LOCAL REGULATORY AUTHORITY.'"**

It is the FNSB's position that there should be very little, if any, state-level dictate regarding Local Regulatory Authorities ("LRA"). Instead, the FNSB believes that each municipality should be given wide latitude to establish the LRA structure that best suits its needs. For example, a community that will not locally regulate or license commercial marijuana establishments may only need an LRA to provide input to the state agency on state license applications as well as be the point of contact for receiving the state application fees to which the locality is entitled. On the other hand, a community which intends to actively regulate commercial establishments at the local level, and which may then set up a local licensure scheme, may find itself needing a much more complex LRA to perform its tasks.

As such, from the FNSB's perspective, AS 17.38's general suggestion that a municipality may choose to set up an LRA is acceptable. The state may wish to specify how the municipality's LRA will communicate with the state agency on license applications (i.e. the LRA must provide the state agency with contact information and/or the LRA must respond to the state agency within a certain period of time) or similar details of state concern but the structure of and tasks performed by an LRA, as well as other LRA details, should be left to each municipality to formulate.

5. OTHER PROVISIONS OF AS 17.38 THAT NEED TO BE ADDRESSED.

In addition to the implementation of the definition of "public" as being an issue of utmost importance, the FNSB has identified several other concerns within the personal-use provisions of the Act that the FNSB feels need immediate attention. The FNSB believes that its concerns may be addressed with appropriate definitions of certain terms.

Of extreme concern to the FNSB is the evidence in Colorado of individual marijuana users attempting to create marijuana extractions using highly flammable or combustible chemicals, which has led to many explosions, fires, injury, and death. The current wording of AS 17.38.020, personal use of marijuana, states that processing of marijuana shall not be a criminal or civil offense. Clearly, in the general sense of the term, "processing" could mean virtually anything a person does to marijuana, from taking the usable marijuana off the plant to drying it, to packaging it, to screening it, to creating extractions or tinctures, to putting marijuana in oils or butters – the list goes on.

As with "public" the word "processing" is used in several different places and in different ways throughout the Act. Because it may be appropriate to allow commercial marijuana establishments to prepare the flammable or combustible extractions with proper safeguards in place, which safeguards the state may wish to address, a definition of "processing" specific to AS 17.38.020 seems appropriate. The FNSB proposes the following language:

As used in AS 17.38.020, "processing" means to handle marijuana, to subject marijuana to an action or a series of actions to alter the form of marijuana, or to otherwise treat marijuana. As used in AS 17.38.020, "processing" does not

include performance of marijuana extractions using flammable or combustible chemicals including, but not limited to, butane, acetone, hexane, naphtha, ethanol, methanol, petroleum ether, and alcohol.

In addition, the FNSB has concerns regarding the Act's personal-use provision which allows a person to possess up to six marijuana plants, three of which may be mature.⁶ The Act does not make clear what it means to possess those plants. For example, if four adults over the age of 21 live in one home, may they each possess six plants, thus allowing 24 plants in that one home, 12 of which can be mature at any given time? Further, if these four adults chose to coordinate their grows, assuming a three month grow-to-maturity period, it would appear that this example household could easily have one mature plant every month for the entire year. Estimates of usable marijuana from each plant vary widely,⁷ but assuming a four-ounce yield, that household could be producing four ounces each month. Further, while this author is no mathematician, it would appear that the same four-person household, with the same assumed three-month grow period, could coordinate their grow and cycle their plants to have *four* mature plants each month. Assuming a four-ounce yield per plant, that household could be producing a full pound of marijuana each month. On the high end of yield estimates, if those plants yield one pound each, that household could be producing four pounds of marijuana a month. To say that this is a lot of marijuana would be an understatement. Further, the personal-use provisions of the Act appear to allow a person to essentially stockpile the harvested marijuana from their plants without limit.⁸ The Act also allows persons to transfer marijuana amongst themselves, one ounce at a time, so long as that transfer is done without "remuneration."⁹ This is not to say that a transfer of marijuana could not be done without *benefit*, setting up a potential barter or trade market under the personal-use provisions of the Act.

Given these concerns and to prevent the above scenarios, the FNSB proposes the following:

A. That the state set forth the following presumption:

As used in AS 17.38.020(b), every person 21 years of age or older living in a residence is presumed to possess each and every marijuana plant in that residence.

B. That the state expressly reaffirm *Noy v. State's*¹⁰ four-ounce limitation on personal use.

The FNSB recognizes the potential for challenge of such a provision, given that the language of the Act appears to allow unlimited personal stockpiling of the marijuana harvested so long as the marijuana is grown and stockpiled at the same location. However, this author believes that a valid argument can be made for expressly reaffirming *Noy's* four-ounce limitation.

The provisions at issue in the Act are under the title of "personal use of marijuana." Therefore, the intent is quite clear that the growing and stockpiling is for marijuana intended for personal

⁶ AS 17.38.020(b).

⁷ Anecdotal estimates obtained by this author range from two ounces to one pound of usable marijuana per plant.

⁸ AS 17.38.020(b).

⁹ AS 17.38.020(c).

¹⁰ 83 P.3d 538 (Alaska App. 2003).

use only. In addition, the Act expressly preserves “the right to privacy as interpreted by the Alaska Supreme Court in *Ravin v. State of Alaska* [537 P.2d 494 (Alaska 1975)].”¹¹ The Act does not speak to *Noy v. State*, in which the court created a bright line rule that a person could possess less than four ounces of marijuana in their home and that amount of marijuana would be presumptively considered for personal use, thus protected under *Ravin*.¹²

Arguably, the layperson voting for Ballot Measure 2 had the general understanding of the state of the law as it related to marijuana prior to voting. Arguably, that understanding was that Alaskans may possess less than four ounces of marijuana in their home for personal use. Arguably, this general understanding of the state of the law has been attributed to the *Ravin* case, the *Noy* case being much less notorious. Given this general understanding from a layperson perspective, it could very well be that the intent of the initiative and of the voters was to allow personal possession of less than four ounces of marijuana in the home, and to allow a person to carry, purchase, and give away one ounce of marijuana at a time.

From the FNSB’s perspective, it appears to be important to create some sort of limit on this personal-use provision within the Act. As the Act stands, it would appear that an arguably-legal barter market is created as of February 24, 2015 and so long as the marijuana is grown and processed by an individual in their home, given to another person one ounce or less at a time, and the exchange is for something other than money, the transaction would be perfectly legal. Clearly, this type of system cannot be properly characterized as “personal use.” Moreover, this type of system undermines the commercial establishment structure that the Act attempts to set forth in other provisions of the Act and would circumvent licensing, testing, and labelling requirements, among other things.

C. Change “remuneration” to “benefit.”

It may be possible to address some of the concerns outlined above by changing the term “remuneration” to “benefit,” then defining the word benefit. In this way, the Act could be restructured to allow a person to give their personal marijuana away for free, with the hope being that fewer people would want to engage in such a transaction and the possibility of a “personal use” barter exchange market would be restricted.

6. INPUT ON WHETHER THE STATE SHOULD ESTABLISH RULEMAKING UNDER THE ALCOHOLIC BEVERAGES CONTROL BOARD, CREATE A MARIJUANA CONTROL BOARD, OR PROCEED WITH NO RULEMAKING UNDER ANY BOARD.

The FNSB is aware that there may be contention at the legislative level as to whether the rulemaking called for by AS 17.38 will occur through the Alcoholic Beverages Control (“ABC”) Board or through a newly-created Marijuana Control Board (“MCB”). The FNSB is further aware that there may be proponents of doing nothing to address the rulemaking provisions of AS 17.38 at the legislative level.

¹¹ AS 17.38.010(c).

¹² *Noy*, 83 P.3d at 540 and 543.

Of note, AS 17.38.090's rulemaking provisions are mandatory. Under that statute, the state is required to take several actions by several deadlines. By default, at a minimum, those mandatory rulemaking deadlines fall to the ABC Board. Because of this default provision, it is the FNSB's understanding that the ABC Board has been and continues to work toward meeting the Act's various deadlines. Whether the responsibilities remain with the ABC Board or are transferred to a new MCB, the FNSB's input is limited to expressing a preference that the state meet its deadlines and implement the scheme envisioned by the Act.

7. OTHER INPUT.

- A. The FNSB can see value in the state considering potential conflicts between Alaskan communities, in particular neighboring communities, created by local regulation being different in each community. The FNSB would suggest considering a mediation-type role to be played by the state board, whether the ABC Board or the MCB, where a community could take a complaint that one community's regulations, enforcement, or lack of enforcement are negatively impacting another community.
- B. The FNSB would suggest that edibles be regulated such that each individual serving be limited to five milligrams of THC, that each individual serving be individually packaged, and that some sort of identifier be required to be a part of the edible itself so as to distinguish it from its non-THC containing counterpart, even outside of its packaging (i.e. each edible must be stamped with a certain recognizable impression or every edible containing THC must be manufactured in a certain recognizable shape, for example, the shape or impression of a marijuana leaf).
- C. The FNSB believes the state should focus its efforts on addressing the eight concerns set forth within U.S. Deputy Attorney General James Cole's memorandum dated August 29, 2013, including laws and regulations to prevent the sale of marijuana to minors and outside of the state of Alaska, preventing violence in the marijuana industry, and preventing drugged driving.

8. INPUT ON WORK DRAFT OF UNNUMBERED SENATE BILL DATED JANUARY 24, 2015.

The FNSB has many areas of concern with respect to the work draft senate bill. However, because that bill has not yet been introduced, the FNSB will provide only general input at this time.

- A. The FNSB does not understand the creation of a new series of marijuana establishments and a new scheme delineating how marijuana can move between the establishments. The new scheme created within this bill is less clear and comprehensive than that established by AS 17.38. In particular, the FNSB objects to the creation of the "marijuana boutique producer."¹³
- B. The FNSB strongly objects to the zoning restrictions set forth in this bill.¹⁴ The FNSB does not object to the state setting forth very general zoning-type restrictions, such as restricting a marijuana establishment from being within 200 feet of a church or school. However, the FNSB believes that zoning should be left to the municipalities in order that each municipality can determine where each type of establishment can best fit into each

¹³ Reference new sections beginning at page 7, line 25.

¹⁴ In particular, the FNSB strenuously objects to the provision set forth on page 5, lines 7-10.

individual community. Further, any zoning-type restrictions set forth by the state should allow the municipality to be more restrictive than those created by the state. In short, the FNSB wishes to retain zoning control to the greatest possible extent.

- C. The FNSB believes that the state should not attempt to restrict or designate the fees that a municipality may implement if it chooses to allow marijuana establishments. Pursuant to AS 17.38, municipality may regulate establishments up to and including banning them altogether. As such, if a municipality wishes to make local licensure cost prohibitive, the state should not restrict that.¹⁵ At a minimum, if the state chooses to designate municipal fees, such fees should be adjustable for inflation or other factors as contemplated by the original Act.¹⁶
- D. The FNSB objects to the work draft bill's removal of edibles from the definition of marijuana products.¹⁷
- E. Several provisions of this work draft bill appear to be directly contrary to the intent and language of the original Act, including some restrictions on personal consumption and growing. Other portions of the work draft bill appear to raise due process concerns.

Again, the FNSB thanks you for allowing us to provide our input at this early legislative stage. Should you have any questions, concerns, or request additional input, please do not hesitate to contact me.

Sincerely,



Wendy Doxey
Assistant Borough Attorney

cc: Mayor Luke Hopkins


¹⁵ Reference page 5, lines 30-31.

¹⁶ See AS 17.38.090(a)(2).

¹⁷ Reference page 23, line 7.

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MEMORANDUM

TO: REP. TILTON
FROM:  BROOKS CHANDLER
CC: RAY GILLESPIE
DATE: January 23, 2015
RE: *INITIAL ISSUES PERTAINING TO PROPOSITION 2*

I coordinated a teleconference with a group of 10 municipal attorneys and police chiefs (Fairbanks North Star Borough, City and Borough of Sitka, City and Borough of Juneau, Municipality of Anchorage, City of Soldotna) and private firms that represent Homer, Cordova, Nome, Dillingham and Unalaska among other communities to discuss initial issues for potential state legislation or local regulation related to legalization of possession, use, cultivation, manufacture and sale of marijuana in Alaska. Please bear in mind that our group does not purport to speak either for AML or the Alaska Municipal Attorneys Association as a whole.

We currently see a need for state legislation or at least discussion of state legislation addressing the following topics:

1. A "default" definition of "in public".
2. Presumptive concentration limits for DUI enforcement.
3. Implied consent for testing for DUI enforcement (assuming valid testing protocols become available).
4. Whether hash oil is considered marijuana.
5. The testing process and transportation for purposes of testing.

- 6. Regulation of edible marijuana products.**
- 7. Detail regarding weighing marijuana vs. marijuana concentrates for purposes of establishing what is "1 ounce" of marijuana.**
- 8. Allowing local option equivalent to Title 4 local options in two years.**
- 9. Marijuana use in so-called "private" clubs.**
- 10. Default provisions regarding a "local regulatory authority".**

There are many more issues surrounding this topic than set forth on this list and our understanding of them will continue to advance as we contact our colleagues both in Alaska and in Colorado whose marijuana law is currently the closest fit to Alaska law. Many of the communities impacted by legalized marijuana will be considering local legislation for adoption before the end of February.

We appreciate your efforts to solicit input and we hope to continue to communicate with you and your staff during the session. Our next teleconference will be on February 3. I am certain members of the group will be willing to review proposed legislation and provide coordinated comments as needed outside of scheduled teleconference sessions.

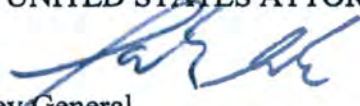


The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

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Replacing Marijuana Prohibition With Sensible Regulations

An overview of four states' frameworks for regulating marijuana similarly to alcohol

State	Age Limit	Personal Possession, Cultivation, and Purchase Limits	Businesses Allowed and Restrictions on Numbers of Each (if any)	Licensing Timeline	Oversight Agency
Colo. (enacted Nov. 6, 2012)	21 and older	<p>Possession: One ounce; plus, at the grow location, marijuana from the adult's plants</p> <p>Home cultivation: Six marijuana plants (three mature)</p> <p>Purchase: One ounce per transaction for residents; a quarter ounce for non-residents</p>	<p>Cultivation facilities, product manufacturers, testing labs, and retail stores.</p> <p>There are no state limits on the numbers of licenses, but localities may restrict their numbers or ban them.</p>	<p>Medical marijuana business licensees began applying for business licenses on October 1, 2013. Others could begin applying July 1, 2014.</p> <p>The first adult use stores opened on January 1, 2014.</p>	Department of Revenue, Marijuana Enforcement Division
Wash. (enacted Nov. 6, 2012)	21 and older	<p>Possession and purchase limits: Up to an ounce of marijuana, 16 ounces of marijuana-infused solids, and 72 ounces of marijuana-infused liquids</p> <p>Home cultivation is not allowed.</p>	<p>Marijuana producers (growers), processors, and retailers. 334 retail licenses were issued statewide.</p> <p>The rules do not limit the number of growers and processors, but they limit the total square feet of cultivation.</p>	<p>Applications were initially accepted in November and December 2013. The board may reopen the application window at its discretion.</p> <p>The first adult use stores opened in July 2014.</p>	Washington State Liquor Control Board
Oregon (enacted Nov. 4, 2014)	21 and older	<p>Possession: Up to eight ounces in one's home, one ounce in public, 16 ounces of marijuana-infused solids, and 72 ounces of marijuana-infused liquids</p> <p>Home Cultivation: Four marijuana plants</p> <p>Purchase: The Oregon Liquor Control Commission may set purchase limits.</p>	<p>Marijuana producers (growers), processors (extract and product manufacturers), wholesalers, and retailers</p> <p>There are no set limits, but the OLCC may refuse to grant a license if doing so in the locality set out in the application is not demanded by public interest or convenience.</p>	The election results will be certified on December 4, 2014, at which time the OLCC can begin rulemaking. The OLCC will begin accepting applications for marijuana businesses on January 4, 2016.	Oregon Liquor Control Commission
Alaska (enacted Nov. 4, 2014)	21 and older	<p>Possession: Up to one ounce of marijuana in public and all marijuana produced by personal cultivation in the same location where cultivation occurred</p> <p>Home cultivation: Six marijuana plants (three mature)</p> <p>Purchase: Up to one ounce</p>	<p>Marijuana cultivation facilities (growers), product manufacturing facilities, testing facilities, and retail stores.</p> <p>There are no statewide restrictions on the numbers of licenses issued per business type, but localities may restrict their numbers or ban them entirely.</p>	The Alaska Division of Elections anticipates certification will be finalized between November 22 and 29. Rules for marijuana establishments must be drafted later, probably in September 2015.	The Alcoholic Beverage Control Board has initial regulatory authority. However, the legislature may create a Marijuana Control Board at any time to take over.

Detailed summaries of each of the programs are available at MPP's Colorado, Washington, Oregon, and Alaska state webpages: mpp.org/co, mpp.org/wa, mpp.org/or, and mpp.org/ak.

State	Tracking and Security	Testing and Labeling	Tax Rate	Local Role	How Licensees Are Determined
Colo.	Licensed entities must use "seed-to-sale" tracking to prevent diversion. Specific security and video systems must be installed, and the businesses must abide by specific alarm and lock standards.	Marijuana and marijuana products must be tested for potency and labeled with the results; contaminant testing is optional. If contaminant testing is done, the label must state the results; if not tested for contaminants, the label must state that fact. Additionally, certain warning labels are required on all retail marijuana.	Current state and local sales and use taxes apply to all retail sales. Voters approved a 15% excise tax and a separate 10% special sales tax in November 2013.	Cities and counties are allowed to prohibit marijuana establishments or to limit their number. They may also enact ordinances restricting the time, place, and manner of businesses.	Initially, only state-licensed medical marijuana businesses could apply. Any qualified business may be licensed, unless the locality has limited the number of businesses. If it has done so, the department decides whom to license, considering the locality's preference when doing so.
Wash.	Licensed entities must use "seed-to-sale" tracking to prevent diversion. Specific security systems are required, including perimeter alarms and video systems.	Certain analytic tests must be performed on marijuana and the various marijuana products. For example, usable marijuana must be tested for moisture content, potency, foreign matter, and microbes.	25% excise tax on wholesale sales to processors; 25% excise tax on wholesale sales to retailers; and a 25% tax on the retail sale price.	Localities are notified when the board receives an application for licensure. They have 20 days to give their advice, which is given "substantial weight" by the board when they make their decision to grant a license.	If there are more qualified applicants in a city or county than are allotted, the state selects licensees by lottery — as it did with retailer licenses in 2013.
Oregon	To be determined in the rulemaking process	To be determined in the rulemaking process	\$35/ounce excise tax on marijuana flowers; \$10/ounce excise tax on marijuana leaves; and \$5/plant excise tax on immature plants. The state has sole authority to impose a sales tax.	Municipalities may enact reasonable time, place, and manner zoning ordinances if they find that doing so is needed to prevent adverse effects. A locality may completely ban marijuana businesses if the locality's voters elect to do so via a ballot question asked of the voters during a statewide general election.	The OLCC may decide how many licenses to allow in a locality, refusing a license if there is reasonable grounds to believe there are sufficient licenses in the area or if the granting of a license is "not demanded by public interest or convenience."
Alaska	To be determined in the rulemaking process	To be determined in the rulemaking process	\$50/ounce excise tax on marijuana sold at wholesale.	Municipal governments may enact ordinances that govern the time, place, manner, and number of marijuana businesses that can operate. Local governments may also ban licensed marijuana businesses altogether through the enactment of an ordinance or by voter initiative.	To be determined in the rulemaking process



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

**Municipal Regulation of Marijuana and Local Control
presented to
House Community & Regional Affairs**

**Acting Director Lawrence Blood
February 12, 2015**



Types of Municipal Government

Alaska has two types of municipal governments – cities and organized boroughs

- 145 cities
- 19 organized boroughs

Alaska also has unincorporated communities

- 80 unincorporated communities located in *organized* boroughs
- 73 unincorporated communities located in the *unorganized* borough



Classification of Cities and Boroughs

There are three classifications of *city governments*. The classification and location of cities are significant in terms of the powers and duties.

- **Home-rule cities** have all legislative powers not prohibited by law or charter.
- **First-class cities** and **second-class cities** are general law. State law defines their powers, duties, and functions.



Classification of Cities and Boroughs

City Governments in Alaska

Classification	Within Organized Boroughs	Within the Unorganized Borough	Total
Home-Rule Cities	7	4	11
First-Class Cities	7	12	19
Second-Class Cities	34	82	116
Total	48	96	145



Classification of Cities and Boroughs

There are four classifications of *organized boroughs*. The classification of boroughs are significant in terms of the powers and duties.

- **Unified home-rule boroughs** and **non-unified home-rule boroughs** have all legislative powers not prohibited by law or charter.
- **First-class boroughs** and **second-class boroughs** are general law governments. State law defines their powers, duties, and functions.



Classification of Cities and Boroughs

Organized Boroughs in Alaska

Classification	Total
Unified Home-Rule Boroughs	4
Non-unified Home Rule Boroughs	7
First-Class Boroughs	1
Second-Class Boroughs	7
Total	19



Provisions Applicable to All Local Governments

- **Article X, Section 1** of the of the Alaska Constitution: provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. *A liberal construction shall be given to the powers of local government units.*
- **AS29.35.400** General construction: A liberal construction shall be given to all powers and functions of a municipality.
- **AS29.35.410** Extent of powers: Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions.



Provisions Applicable to Home-Rule Governments

While general-law local governments have broad powers, home-rule local governments have even greater powers.

- **Article X, Section 11** of the Alaska Constitution provides that: A home-rule borough or city may exercise all legislative powers not prohibited by law or by charter.



Distinctions Between General Law Boroughs

A principal distinction between a first-class borough and a second-class borough relates to the authority to assume powers.

- A **first-class borough** may exercise any power not prohibited by law on a non-area wide basis (the area of the borough outside cities) by adopting an ordinance.
- A **second-class borough** must gain voter approval for the authority to exercise many non-area wide powers.



Duties and Powers of Cities and Boroughs

The duties and powers of cities and boroughs depend upon classification. City duties and powers also vary in terms of location within or outside of an organized borough.

- All local governments have certain fundamental duties such as conducting elections and holding regular meetings. Beyond this, duties and powers of municipalities vary considerably.
- **Second-class cities** are not obligated by law to provide any particular service.



Duties and Powers of Cities and Boroughs

- All **organized boroughs**, as well as **home-rule cities** and **first-class cities** in the unorganized borough, *must* exercise planning, platting, and land use regulation.
- **Second-class cities** in the unorganized borough are *permitted*, but not required, to exercise planning powers.
- **Home-rule cities**, **first-class cities**, and **second-class cities** in organized boroughs *may* exercise planning, platting, and land-use regulation powers only if those powers have been delegated to them by the borough.
- **Organized boroughs** have the duty to collect municipal property, sales, and use taxes levied within their boundaries.
- Otherwise, municipal powers are exercised at the discretion of local governments.



Powers and Duties of Cities

POWERS AND DUTIES OF CITIES

	HOME-RULE CITY	FIRST-CLASS CITY	SECOND-CLASS CITY	REFERENCES
Planning, Platting & Land Use Regulation	If the city is in the unorganized borough, it must exercise the powers. If it is in an organized borough, it may be permitted by borough to exercise the powers.	Same as for a home-rule city, except the power must be exercised in accordance with AS 29.40.	The city is not required to exercise the powers in any circumstance, but may be permitted in all cases in the manner described for first-class cities.	AS 29.35.250(b) AS 29.35.260(c)
Property Tax	The city may tax up to 30 mills, except where a higher levy is necessary to avoid default on debt. Some home-rule charters require voter approval to authorize the levy property taxes.	The city may tax up to 30 mills except where a higher levy is necessary to avoid default on debt. Voter approval is not required under State law; however, some general-law municipal governments have more restrictive limitations imposed at the local level.	The city may tax up to 20 mills, except where a higher levy is required to avoid default. Voter approval is required.	AS 29.45.550- AS 29.45.590
Sales Tax	The rate of levy may be limited by charter. Requirements for voter approval may also be set by charter.	There is no limit on the rate of levy of sales taxes; however, voter approval is required.	Same as for a first-class city.	AS 29.45.700
Other Powers	Possess all legislative powers not prohibited by law or charter.	May exercise other powers not prohibited by law.	May exercise other powers not prohibited by law.	Art. X, § 11 AK Constitution AS 29.35.250



Powers and Duties of Organized Boroughs

POWERS AND DUTIES OF ORGANIZED BOROUGHS

	HOME-RULE BOROUGH (including unified municipality)	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Planning, Platting & Land Use Regulation	The borough or unified municipality must exercise the powers areawide, but not necessarily in accordance with AS 29.40.	The borough must exercise the powers areawide; in accordance with AS 29.40; the borough may allow cities to assume such powers within their boundaries	Same as for a first-class borough.
Property Tax	Limited to 30 mills except where a higher levy is necessary to avoid default on debt; voter approval to levy property taxes is required by some charters.	Same as home-rule except there is no charter. Still some general law boroughs have more limited taxing authority established by local action.	Same as for a first-class borough.
Sales Tax	The rate of levy may be limited by charter and voter approval to levy sales taxes may be required by charter.	No limit exists on the rate of levy; however, voter approval is required to levy sales taxes.	Same as for a first-class borough.



Powers and Duties of Organized Boroughs

POWERS AND DUTIES OF ORGANIZED BOROUGHS (continued)

	HOME-RULE BOROUGH (including unified municipality)	FIRST-CLASS BOROUGH	SECOND-CLASS BOROUGH
Regulate Fireworks, Provide Solid & Septic Waste Disposal, Housing Rehabilitation, Economic Development, Roads & Trails, EMS Communications, Regulate Motor Vehicles and Development Projects	Determined by charter or ordinance	May be exercised areawide upon approval of areawide voters or by transfer of powers from all cities; may be exercised by ordinance on a non-areawide or service area basis.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities; may be exercised by ordinance on a non-areawide basis; may be exercised on a service area basis with voter approval
Other Powers Not Prohibited	Determined by charter or ordinance	Same as above.	May be exercised areawide upon approval of areawide voters; or by transfer of powers from all cities and approval of non- areawide voters; may be exercised non-areawide upon approval of non-areawide voters; may be exercised on a service area basis with voter approval



Powers of Unincorporated Communities

- No planning powers
- No taxing powers
- No policing powers

Unincorporated communities *inside* an organized borough are governed by the areawide or nonareawide powers of the borough.

Unincorporated communities *outside* an organized borough could only regulate marijuana in accordance with a legislative enactment.



Unincorporated Community Boundary Examples

- The perimeter of an **established village** is a circle around the established village that includes an area within a five-mile radius of the post office.
- A **census designated place (CDP)** is a concentration of population identified by the US Census Bureau for statistical purposes. CDPs are populated areas that lack a separate municipal government, but otherwise physically resemble an incorporated place.
- A **community** is a place that is not incorporated as a municipality, in which 25 or more individuals reside as a social unit.



Questions?

Wasilla considers weed ban

Posted: Saturday, February 14, 2015 9:29 pm

WASILLA — The city council will consider a ban on the production of marijuana concentrates Feb. 23.

An ordinance introduced by council member Stu Graham would also limit the use of marijuana to within a home, and set a two-ounce limit for both possession and transportation with the city limits. The measure also stipulates that marijuana use must not disturb residents inside the home or in neighboring homes. The measure also lays out a series of fines for violations, roughly \$300 for manufacture, and \$100 each for violations of the possession, transportation, and nuisance use sections of the resolution.

If adopted, the measure would make Wasilla the first city in the Mat-Su Borough to address the question of marijuana possession legislatively since the November 2014 passage of the ballot initiative legalizing recreational marijuana. Palmer officials say a previously enacted smoking ban — the measure covers “burning plant material” — covers smoking marijuana in public places. Houston has not yet addressed the issue. The borough government is awaiting clarification from the Legislature as to whether they can address the issue legislatively.

The approaches in each city are largely driven by the will of voters. Houston passed the initiative by the widest margin, at about 14 percent. Palmer approved it by a much narrower margin, about four percent. Voters rejected the marijuana initiative in Wasilla by about six percent. Overall, borough voters opposed the measure.

The resolution introduced Feb. 9 is no different, according to Graham.

“The city has a responsibility to push forward the will of the voters, which was to not allow commercialization of marijuana within the city limits of Wasilla,” he said. “The will of the voters is that we not allow this to become mainstream. If we don’t take action, it’s going to become mainstream, and once you’re in the fast current, it’s hard to get out of it.”

Graham timed the initiative to be considered ahead of legalized possession measure, which takes effect at the end of February, though the actual date of legalization is still a matter of interpretation of



Marijuana plant

The city of Wasilla is considering legislation that could greatly restrict the use of soon-to-be-legal marijuana in the city.

the measure itself, with dates given ranging from Feb. 24 to Feb. 26. The Feb. 23 meeting is the last scheduled meeting before that range of dates.

The ordinance is targeted at getting rules on the books to amend as potential problems arise, Graham said.

“The reason that I addressed edibles, extracts, concentrates that sort of thing is because the state hasn’t acted to define anything on that, and while I empathize with those who said I’d rather eat a cookie than smoke a joint, I empathize with that, but do you have any idea what your eating, or does the police officer who’s trying to enforce the law have any idea what was used to make that cookie or make that brownie?” he said. “Did they take a pound of marijuana to make an ounce of concentrate to make those two-dozen brownies?”

That particular portion of the ordinance isn’t intended to exclude personal use, Graham said.

“Until we can find figure that out, it’s probably better to say just don’t do it, because if we say don’t do it and you’re a brownie eater, chances are you’re still going to make your brownies at home, but you’re not going to be making them for your neighbors, and that would be kind of the intent there,” he said.

While the primary focus of public comment is reserved for public hearings, a few hopeful entrepreneurs attended the meeting to voice concerns about the proposed measure.

Sarah Williams intends to start a seed-to-sale greenhouse and smoking parlor named Midnight Greenery in the borough, and objected to several portions of the law on the grounds that government was interfering with consumers unreasonably.

“Adding edibles to the list provides significant government overreach into the home of the individual who wants to make brownies for medicine,” she said.

The proposition would also run contrary to the spirit of the ballot initiative without an amendment allowing each adult to possess up to an ounce of marijuana in the home, Williams said.

Williams reserved her strongest criticism for the proposed limitation of smoking marijuana in the home.

“First, confining marijuana use to a domicile treats cannabis users like second-class citizens,” she said. “In an attempt to regulate this like alcohol, we need to allow businesses to apply for permits to allow smoking clubs, social clubs.”

“Otherwise, consumers will speak with their dollars and they’ll go elsewhere,” Williams added. “At the same time, if social clubs are not wanted because the assumption is that Wasilla didn’t really want this in the first place, won’t the consumer speak with their dollars and not go to them either? So why not allow the opportunity for the free market to decide for itself?”

Larry Clark, CEO of Valkyrie Security and Asset Protection Inc., said his company is particularly concerned about restrictions on transportation. Established security firms won't accept marijuana for secure transport, creating a market opening for his firm, the staff of which is largely comprised of former law enforcement officials and veterans, according to Clark.

“If those parties that are in business are north of Wasilla, what limitations or amendments can be made for us to transport larger amounts to their dispensary locations in Anchorage or Eagle River?” he said. “Are we going to be held to the same standard as the general public? Because we are a licensed business, and that is what we are in business to do is to provide a safe transport so that we can work with law enforcement to keep the criminal element out of this.”

Wasilla's location between the northern valley agricultural areas and the markets could pose a problem, because there are few safe alternate routes to the south, Clark pointed out.

Mayor Bert Cottle, who has served on the state alcoholic Beverage Control Board, said the local regulation likely wouldn't affect traffic along the state-maintained Parks Highway, which would be the primary conduit for agricultural traffic. The board has resolved similar disputes involving alcohol transportation in the past, Cottle added.

In other business, a resolution laying out a timetable for the possible sale of the Meta Rose building was postponed indefinitely. Council members had sought to amend the timeframe to match ongoing events. An appraisal estimating the building's worth at about \$1.6 million without an “anchor” or main business was delivered Monday, several months behind schedule.

Some council members — Deputy Mayor A. Clark Buswell and Graham — said they wanted to wait and see whether a proposed downtown overlay district would affect the sale.

The overlay district received a 4-1 recommendation from the city planning commission at that body's Tuesday meeting.

Contact Brian O'Connor at 352-2269 or brian.oconnor@frontiersman.com or on Twitter [@reporterbriano](https://twitter.com/reporterbriano).

Sourcebook
For
Municipal Regulation of Marijuana



Prepared as a courtesy

By

The House Community and Regional Affairs Committee
Rep. Cathy Tilton, Chair

“An Act to tax and regulate the production, sale, and use of marijuana.”

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

*Section 1. AS 17 is amended by adding a new chapter to read:

Chapter 38. The regulation of marijuana

Sec. 17.38.010. Purpose and findings.

(a) In the interest of allowing law enforcement to focus on violent and property crimes, and to enhance individual freedom, the people of the state of Alaska find and declare that the use of marijuana should be legal for persons 21 years of age or older.

(b) In the interest of the health and public safety of our citizenry, the people of the state of Alaska further find and declare that the production and sale of marijuana should be regulated so that:

- (1) Individuals will have to show proof of age before purchasing marijuana;
- (2) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and
- (3) Marijuana sold by regulated businesses will be labeled and subject to additional regulations to ensure that consumers are informed and protected.

(c) The people of the state of Alaska further declare that the provisions of this Act are not intended to diminish the right to privacy as interpreted by the Alaska Supreme Court in *Ravin v. State of Alaska*.

(d) Nothing in this Act proposes or intends to require any individual or entity to engage in any conduct that violates federal law, or exempt any individual or entity from any requirement of federal law, or pose any obstacle to federal enforcement of federal law.

Sec. 17.38.020. Personal use of marijuana.

Notwithstanding any other provision of law, except as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and shall not be a criminal or civil offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law:

- (a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;
- (b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown;
- (c) 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;
- (d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public; and
- (e) Assisting another person who is 21 years of age or older in any of the acts described in paragraphs (a) through (d) of this section.

Sec. 17.38.030. Restrictions on personal cultivation, penalty.

(a) The personal cultivation of marijuana described in AS 17.38.020(b) is subject to the following terms:

(1) Marijuana plants shall be cultivated in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aids.

(2) A person who cultivates marijuana must take reasonable precautions to ensure the plants are secure from unauthorized access.

(3) Marijuana cultivation may only occur on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property.

(b) A person who violates this section while otherwise acting in compliance with AS 17.38.020(b) is guilty of a violation punishable by a fine of up to \$750.

Sec. 17.38.040. Public consumption banned, penalty.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

Sec. 17.38.050. False identification, penalty.

(a) A person who is under 21 years of age may not present or offer to a marijuana establishment or the marijuana establishment's agent or employee any written or oral evidence of age that is false, fraudulent or not actually the person's own, for the purpose of:

(1) Purchasing, attempting to purchase or otherwise procuring or attempting to procure marijuana or marijuana products; or

(2) Gaining access to a marijuana establishment.

(b) A person who violates this section is guilty of a violation punishable by a fine of up to \$400.

Sec. 17.38.060. Marijuana accessories authorized.

Notwithstanding any other provision of law, it is lawful and shall not be an offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law for persons 21 years of age or older to manufacture, possess, or purchase marijuana accessories, or to distribute or sell marijuana accessories to a person who is 21 years of age or older.

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

(a) Notwithstanding any other provision of law, the following acts, when performed by a retail marijuana store 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 retail marijuana store, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

(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.

(b) Notwithstanding any other provision of law, the following acts, when performed by a marijuana cultivation facility 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 cultivation

facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

- (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.

(c) Notwithstanding any other provision of law, the following acts, when performed by a marijuana product manufacturing facility 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 product manufacturing facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

- (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.

(d) Notwithstanding any other provision of law, the following acts, when performed by a marijuana testing facility 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 testing facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

- (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.

(e) Notwithstanding any other provision of law, it is lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law to lease or otherwise allow the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with paragraphs (a) through (d) of this section.

(f) Nothing in this section prevents the imposition of penalties upon marijuana establishments for violating this chapter or rules adopted by the board or local governments pursuant to this chapter.

(g) The provisions of AS 17.30.020 do not apply to marijuana establishments.

Sec. 17.38.080. Marijuana Control Board.

At any time, the legislature may create a Marijuana Control Board in the Department of Commerce, Community, and Economic Development or its successor agency to assume the power, duties, and responsibilities delegated to the Alcoholic Beverage Control Board under this chapter.

Sec. 17.38.090. Rulemaking.

(a) Not later than nine months after the effective date of this act, the board shall adopt regulations necessary for implementation of this chapter. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a marijuana establishment, with such procedures subject to all requirements of AS 44.62, the Administrative Procedure Act;

(2) A schedule of application, registration and renewal fees, provided, 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;

(3) Qualifications for registration that are directly and demonstrably related to the operation of a marijuana establishment;

(4) Security requirements for marijuana establishments, including for the transportation of marijuana by marijuana establishments;

(5) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of 21;

(6) Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;

(7) Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;

(8) Reasonable restrictions on the advertising and display of marijuana and marijuana products; and

(9) Civil penalties for the failure to comply with regulations made pursuant to this chapter.

(b) In order to ensure that individual privacy is protected, the board shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers.

Sec. 17.38.100. Marijuana establishment registrations.

(a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days prior to the expiration of the marijuana establishment's registration.

(b) The board shall begin accepting and processing applications to operate marijuana establishments one year after the effective date of this act.

(c) Upon receiving an application or renewal application for a marijuana establishment, the board shall 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 desires to operate the marijuana establishment, unless the local government has not designated a local regulatory authority pursuant to AS 17.38.110(c).

(d) Within 45 to 90 days after receiving an application or renewal application, the board shall issue an annual registration to the applicant unless the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.090 or the board is notified by the relevant local government that the applicant is not in compliance with ordinances and regulations made pursuant to AS 17.38.110 and in effect at the time of application.

(e) If a local government has enacted a numerical limit on the number of marijuana establishments and a greater number of applicants seek registrations, the board shall solicit and consider input from the local regulatory authority as to the local government's preference or preferences for registration.

(f) Upon denial of an application, the board shall notify the applicant in writing of the specific reason for its denial.

(g) Every marijuana establishment registration shall specify the location where the marijuana establishment will operate. A separate registration shall be required for each location at which a marijuana establishment operates.

(h) Marijuana establishments and the books and records maintained and created by marijuana establishments are subject to inspection by the board.

Sec. 17.38.110. Local control.

(a) A local government may 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.

(b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.

(c) A local government may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a marijuana establishment within the boundaries of the local government. The local government may provide that the local regulatory authority may issue such registrations should the issuance by the local government become necessary because of a failure by the board to adopt regulations pursuant to AS 17.38.090 or to accept or process applications in accordance with AS 17.38.100.

(d) A local government may establish procedures for the issuance, suspension, and revocation of a registration issued by the local government in accordance with (f) of this section or (g) of this section. These procedures shall be subject to all requirements of AS 44.62, the Administrative Procedure Act.

(e) A local government may establish a schedule of annual operating, registration, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a local government in accordance with (f) of this section and a registration fee shall only be due if a registration is issued by a local government in accordance with (f) of this section or (g) of this section.

(f) If the board does not issue a registration to an applicant within 90 days of receipt of the application filed in accordance with AS 17.38.100 and does not notify the applicant of the specific, permissible reason for its denial, in writing and within such time period, or if the board has adopted regulations pursuant to AS 17.38.090 and has accepted applications pursuant to AS 17.38.100 but has not issued any registrations by 15 months after the effective date of this act, the applicant may resubmit its application directly to the local regulatory authority, pursuant to (c) of this section, and the local regulatory authority may issue an annual registration to the applicant. If an application is submitted to a local regulatory authority under this paragraph, the board shall forward to the local regulatory authority the application fee paid by the applicant to the board upon request by the local regulatory authority.

(g) If the board does not adopt regulations required by AS 17.38.090, an applicant may submit an application directly to a local regulatory authority after one year after the effective date of this act and the local regulatory authority may issue an annual registration to the applicant.

(h) A local regulatory authority issuing a registration to an applicant shall do so within 90 days of receipt of the submitted or resubmitted application unless the local regulatory authority finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made pursuant to (b) of this section in effect at the time the application is submitted to the local regulatory authority. The local government shall notify the board if an annual registration has been issued to the applicant.

(i) A registration issued by a local government in accordance with (f) of this section or (g) of this section shall have the same force and effect as a registration issued by the board in accordance with AS 17.38.100. The holder of such registration shall not be subject to regulation or enforcement by the board during the term of that registration.

(j) A subsequent or renewed registration may be issued under (f) of this section on an annual basis only upon resubmission to the local government of a new application submitted to the board pursuant to AS 17.38.100.

(k) A subsequent or renewed registration may be issued under (g) of this section on an annual basis if the board has not adopted regulations required by AS 17.38.090 at least 90 days prior to the date upon which such subsequent or renewed registration would be effective or if the board has adopted regulations pursuant to AS 17.38.090 but has not, at least 90 days after the adoption of such regulations, issued registrations pursuant to AS 17.38.100.

(l) Nothing in this section shall limit such relief as may be available to an aggrieved party under AS 44.62, the Administrative Procedure Act.

Sec. 17.38.120. Employers, driving, minors and control of property.

(a) Nothing in this chapter is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.

(b) Nothing in this chapter is intended to allow driving under the influence of marijuana or to supersede laws related to driving under the influence of marijuana.

(c) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of 21.

(d) Nothing in this chapter shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

Sec. 17.38.130. Impact on medical marijuana law.

Nothing in this chapter shall be construed to limit any privileges or rights of a medical marijuana patient or medical marijuana caregiver under AS 17.37.

Sec. 17.38.900. Definitions.

As used in this chapter unless the context otherwise requires:

- (1) "Board" means the Alcoholic Beverage Control Board established by AS 04.06.
- (2) "Consumer" means a person 21 years of age or older who purchases marijuana or marijuana products for personal use by persons 21 years of age or older, but not for resale to others.
- (3) "Consumption" means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (4) "Local government" means both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities.

(5) "Local regulatory authority" means the office or entity designated to process marijuana establishment applications by a local government.

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

(7) "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.

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

(9) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

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

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

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

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

(14) "Unreasonably impracticable" means that the 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.

*Sec. 2. AS 43 is amended by adding a new chapter to read:

Chapter 61. Excise tax on marijuana

Sec. 43.61.010. Marijuana tax.

(a) An excise tax is imposed on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. Every marijuana cultivation facility shall pay an excise tax at the rate of \$50 per ounce, or proportionate part thereof, on marijuana that is sold or transferred from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility.

(b) The department may exempt certain parts of the marijuana plant from the excise tax described in (a) of this section or may establish a rate lower than \$50 per ounce for certain parts of the marijuana plant.

Sec. 43.61.020. Monthly Statement and Payments.

(a) Each marijuana cultivation facility shall send a statement by mail or electronically to the department on or before the last day of each calendar month. The statement must contain an account of the amount of marijuana sold or transferred to retail marijuana stores and marijuana product manufacturing facilities in the state during the preceding month, setting out

- (1) the total number of ounces, including fractional ounces sold or transferred;
- (2) the names and Alaska address of each buyer and transferee; and
- (3) the weight of marijuana sold or transferred to the respective buyers or transferees.

(b) The marijuana cultivation facility shall pay monthly to the department, all taxes, computed at the rates prescribed in this chapter, on the respective total quantities of the marijuana sold or transferred during the preceding month. The monthly return shall be filed and the tax paid on or before the last day of each month to cover the preceding month.

Sec. 43.61.030. Administration and Enforcement of Tax.

(a) Delinquent payments under this chapter shall subject the marijuana cultivation facility to civil penalties under AS 43.05.220.

(b) If a marijuana cultivation facility fails to pay the tax to the state the marijuana cultivation facility's registration may be revoked in accordance with procedures established under AS 17.38.090(a)(1).

***Sec. 3.** The provisions of this Act are independent and severable, and, except where otherwise indicated in the text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions. If any provision of this Act, or the application thereof to any person or circumstance, is found to be invalid or unconstitutional, the remainder of this Act shall not be affected and shall be given effect to the fullest extent possible.



ALASKA STATE LEGISLATURE

House Community and Regional Affairs Committee

REP. CATHY TILTON
Chairman
State Capitol, Rm. 411
Juneau, AK 99801

Rep. Paul Seaton, Vice-Chair
Rep. Shelley Hughes
Rep. Benjamin Nageak
907.465.2199

Rep. Lora Reinbold
Rep. Harriet Drummond
Rep. Dan Ortiz

Links to current marijuana legislation

Senate Bill 30 "An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

Sponsor: *Senate Judiciary Committee*

<http://www.akleg.gov/basis/Bill/Detail/29?Root=SB%20%2030>

House Bill 59 – "An Act relating to marijuana concentrates; and providing for an effective date."

Sponsor: *Rep. Paul Seaton*

<http://www.akleg.gov/basis/Bill/Detail/29?Root=HB%20%2059>

House Bill 75 "An Act relating to the regulation of marijuana by municipalities; and providing for an effective date."

Sponsor: *House Community and Regional Affairs Committee*

<http://www.akleg.gov/basis/Bill/Detail/29?Root=HB%20%2075>

House Bill 79 "An Act relating to controlled substances; relating to marijuana; relating to driving motor vehicles when there is an open marijuana container; and providing for an effective date."

Sponsor: *House Judiciary Committee*

<http://www.akleg.gov/basis/Bill/Detail/29?Root=HB%20%2079>



Fairbanks North Star Borough

Department of Law

809 Pioneer Road • PO Box 71267 • Fairbanks, AK 99707 - (907) 459-1318 FAX 459-1155

January 30, 2015

Via email: heath.hilyard@akleg.gov

Heath Hilyard

Chief of Staff to Rep. Cathy Tilton

State Capitol Room 411

Juneau, Alaska 99801

Dear Mr. Hilyard:

The following is in response to your request for municipal input regarding Alaska's new marijuana laws, enacted at AS 17.38. Initially, please allow me to thank you, on behalf of the Fairbanks North Star Borough ("FNSB"), for soliciting our input and allowing our community to have a voice in this process. What follows is initial input from FNSB's administration and, in particular, the views of FNSB's Mayor, Luke Hopkins. The opinions expressed herein do not necessarily reflect the view of the FNSB Assembly.

Of initial note and of utmost importance, FNSB would like to ultimately see laws and regulations that grant maximum authority and control to be exercised at the local level. In what follows, I will address the specific questions you posed in your email dated January 26, 2015 and will then provide input from the FNSB on other topics.

1. ALTERNATIVE DEFINITION FOR "PUBLIC USE" OR "IN PUBLIC."

The definition of "public" as used in AS 17.38 was one of the first points of concern identified by the FNSB with the Act as currently written. It is the FNSB's position that, because the personal use provisions of the Act will go into effect on February 24, 2015, and because those provisions prohibit the consumption of marijuana in "public," implementing an enforceable and understandable definition of "public" is of utmost importance.

Unfortunately, simply defining "public" is not as straightforward as it might seem at first glance. There is a problem with the repeated use of the word "public" in different contexts of the Act. For instance, the word "public" is used to ban the consumption of marijuana in public¹ and it is also used to state that cultivated marijuana must remain out of "public view,"² and that it cannot be visible to the "general public from a public right-of way."³

¹ AS 17.38.020(d) and 17.38.040.

² AS 17.38.030(a)(1).

³ AS 17.38.070(a)(1).

This language creates two options: 1. Redraft the Act's language to more artfully reflect what is intended by the initiative without using the word "public" in several different ways. 2. Define "public" specifically and expressly for the purposes of AS 17.38.020 and 17.38.040, then separately define what "public view" means, what "general public" means, and what "public right-of-way" means. Option 1 appears to be the more efficient of the two options and suggested language is presented below.

Sec. 17.38.020. Personal use of marijuana.

(d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in **public**;

Sec. 17.38.030. Restrictions on personal cultivation, penalty.

(a) The personal cultivation of marijuana described in AS 17.38.020(b) is subject to the following terms:

(1) Marijuana plants shall be cultivated in a location where the plants are not subject to **public** view from a highway without the use of binoculars, ~~aircraft~~, or other optical aids, including aircraft.

Sec. 17.38.040. **Public consumption banned, penalty.**

It is unlawful to consume marijuana in **public**. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

(a) Notwithstanding any other provision of law, the following acts... are lawful...:

(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 highway, sidewalk, or similar location ~~public right-of-way~~;

Add a definition that "highway" has the meaning set forth in AS 11.81.900(30).⁴

Add a definition that, for the purposes of AS 17.38, "public" means a place to which the people as a whole or a substantial group of persons has access without restriction and includes, but is not limited to, any building that used by or open to the people as a whole or a substantial group of persons, in or upon any highway as defined by AS 11.81.900(30), whether in a vehicle or not, sidewalks, rivers, lakes, parks, convention centers, shopping centers, transportation facilities, school facilities, correctional facilities, lobbies, doorways and other portions of apartment buildings and hotels that are not designed for actual dwelling or residence, any outdoor location where the consumption of marijuana is clearly observable from the foregoing public places, and any location similar to those

⁴ AS 11.81.900(30) defines highway as follows: "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities.

places delineated herein. Notwithstanding the foregoing, a location with proper licensure in place pursuant to AS 17.38 and that is in compliance with applicable municipal ordinances, including municipal licensure requirements, if any, and that is operating within the restrictions of such licensure is not a public place within the meaning of AS 17.38.

**2. ADDRESS POINT 8 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"ALLOWING LOCAL OPTION EQUIVALENT TO TITLE 4 LOCAL OPTIONS IN TWO YEARS."**

Although the FNSB does not at this time intend to exercise a local option to ban either commercial marijuana facilities as allowed currently, nor to ban personal possession and consumption if that option were available in two years, the FNSB does support the proposition that local communities should have maximum control over such decisions. As such, the FNSB would support amending AS 17.38 in two years to allow local governments to opt-out and make their communities "dry" from marijuana in the same way communities may be made "dry" from alcohol.

**3. ADDRESS POINT 9 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"MARIJUANA USE IN SO-CALLED 'PRIVATE' CLUBS."**

The FNSB would like the decision of whether to allow marijuana consumption bars or private, members-only marijuana consumption clubs to be made at the municipality level, based on what each municipality determines is in the best interests of their constituents.

The FNSB does not object to the state creating a basic structure under which such consumption facilities would be regulated at the state level, so long as the municipalities can choose to ban such facilities or regulate them more restrictively at the local level. The FNSB believes that such facilities should be prohibited from serving alcohol or allowing the consumption of alcohol on such marijuana consumption facility premises.

The FNSB is aware that, in combination with Colorado's marijuana laws and its Clean Indoor Air Act, at least one legal, licensed marijuana consumption club⁵ has been able to open. To FNSB's understanding, this club is for members only and is not open to the public, thus skirting the no-consumption-in-public ban, it ensures that the consumption activities inside the club are not viewable from the outside, and it employs no more than three employees, which skirts Colorado's Clean Indoor Air Act, which bans smoking in any location that employs more than three people. This type of private consumption club is potentially acceptable to the FNSB, so long as the club is properly licensed under AS 17.38 and any municipal licensure scheme.

⁵ ClubNed Café's website is found at www.clubnedcafe.com. An article outlining ClubNed's venture through Colorado's regulatory process can be found at <http://www.forbes.com/sites/jacobsullum/2014/03/11/colorado-couple-to-open-first-officially-approved-cannabis-club>.

**4. ADDRESS POINT 10 FROM BROOKS CHANDLER'S MEMORANDUM OF JANUARY 23, 2015:
"DEFAULT PROVISIONS REGARDING A 'LOCAL REGULATORY AUTHORITY.'"**

It is the FNSB's position that there should be very little, if any, state-level dictate regarding Local Regulatory Authorities ("LRA"). Instead, the FNSB believes that each municipality should be given wide latitude to establish the LRA structure that best suits its needs. For example, a community that will not locally regulate or license commercial marijuana establishments may only need an LRA to provide input to the state agency on state license applications as well as be the point of contact for receiving the state application fees to which the locality is entitled. On the other hand, a community which intends to actively regulate commercial establishments at the local level, and which may then set up a local licensure scheme, may find itself needing a much more complex LRA to perform its tasks.

As such, from the FNSB's perspective, AS 17.38's general suggestion that a municipality may choose to set up an LRA is acceptable. The state may wish to specify how the municipality's LRA will communicate with the state agency on license applications (i.e. the LRA must provide the state agency with contact information and/or the LRA must respond to the state agency within a certain period of time) or similar details of state concern but the structure of and tasks performed by an LRA, as well as other LRA details, should be left to each municipality to formulate.

5. OTHER PROVISIONS OF AS 17.38 THAT NEED TO BE ADDRESSED.

In addition to the implementation of the definition of "public" as being an issue of utmost importance, the FNSB has identified several other concerns within the personal-use provisions of the Act that the FNSB feels need immediate attention. The FNSB believes that its concerns may be addressed with appropriate definitions of certain terms.

Of extreme concern to the FNSB is the evidence in Colorado of individual marijuana users attempting to create marijuana extractions using highly flammable or combustible chemicals, which has led to many explosions, fires, injury, and death. The current wording of AS 17.38.020, personal use of marijuana, states that processing of marijuana shall not be a criminal or civil offense. Clearly, in the general sense of the term, "processing" could mean virtually anything a person does to marijuana, from taking the usable marijuana off the plant to drying it, to packaging it, to screening it, to creating extractions or tinctures, to putting marijuana in oils or butters – the list goes on.

As with "public" the word "processing" is used in several different places and in different ways throughout the Act. Because it may be appropriate to allow commercial marijuana establishments to prepare the flammable or combustible extractions with proper safeguards in place, which safeguards the state may wish to address, a definition of "processing" specific to AS 17.38.020 seems appropriate. The FNSB proposes the following language:

As used in AS 17.38.020, "processing" means to handle marijuana, to subject marijuana to an action or a series of actions to alter the form of marijuana, or to otherwise treat marijuana. As used in AS 17.38.020, "processing" does not

include performance of marijuana extractions using flammable or combustible chemicals including, but not limited to, butane, acetone, hexane, naphtha, ethanol, methanol, petroleum ether, and alcohol.

In addition, the FNSB has concerns regarding the Act's personal-use provision which allows a person to possess up to six marijuana plants, three of which may be mature.⁶ The Act does not make clear what it means to possess those plants. For example, if four adults over the age of 21 live in one home, may they each possess six plants, thus allowing 24 plants in that one home, 12 of which can be mature at any given time? Further, if these four adults chose to coordinate their grows, assuming a three month grow-to-maturity period, it would appear that this example household could easily have one mature plant every month for the entire year. Estimates of usable marijuana from each plant vary widely,⁷ but assuming a four-ounce yield, that household could be producing four ounces each month. Further, while this author is no mathematician, it would appear that the same four-person household, with the same assumed three-month grow period, could coordinate their grow and cycle their plants to have *four* mature plants each month. Assuming a four-ounce yield per plant, that household could be producing a full pound of marijuana each month. On the high end of yield estimates, if those plants yield one pound each, that household could be producing four pounds of marijuana a month. To say that this is a lot of marijuana would be an understatement. Further, the personal-use provisions of the Act appear to allow a person to essentially stockpile the harvested marijuana from their plants without limit.⁸ The Act also allows persons to transfer marijuana amongst themselves, one ounce at a time, so long as that transfer is done without "remuneration."⁹ This is not to say that a transfer of marijuana could not be done without *benefit*, setting up a potential barter or trade market under the personal-use provisions of the Act.

Given these concerns and to prevent the above scenarios, the FNSB proposes the following:

A. That the state set forth the following presumption:

As used in AS 17.38.020(b), every person 21 years of age or older living in a residence is presumed to possess each and every marijuana plant in that residence.

B. That the state expressly reaffirm *Noy v. State's*¹⁰ four-ounce limitation on personal use.

The FNSB recognizes the potential for challenge of such a provision, given that the language of the Act appears to allow unlimited personal stockpiling of the marijuana harvested so long as the marijuana is grown and stockpiled at the same location. However, this author believes that a valid argument can be made for expressly reaffirming *Noy's* four-ounce limitation.

The provisions at issue in the Act are under the title of "personal use of marijuana." Therefore, the intent is quite clear that the growing and stockpiling is for marijuana intended for personal

⁶ AS 17.38.020(b).

⁷ Anecdotal estimates obtained by this author range from two ounces to one pound of usable marijuana per plant.

⁸ AS 17.38.020(b).

⁹ AS 17.38.020(c).

¹⁰ 83 P.3d 538 (Alaska App. 2003).

use only. In addition, the Act expressly preserves “the right to privacy as interpreted by the Alaska Supreme Court in *Ravin v. State of Alaska* [537 P.2d 494 (Alaska 1975)].”¹¹ The Act does not speak to *Noy v. State*, in which the court created a bright line rule that a person could possess less than four ounces of marijuana in their home and that amount of marijuana would be presumptively considered for personal use, thus protected under *Ravin*.¹²

Arguably, the layperson voting for Ballot Measure 2 had the general understanding of the state of the law as it related to marijuana prior to voting. Arguably, that understanding was that Alaskans may possess less than four ounces of marijuana in their home for personal use. Arguably, this general understanding of the state of the law has been attributed to the *Ravin* case, the *Noy* case being much less notorious. Given this general understanding from a layperson perspective, it could very well be that the intent of the initiative and of the voters was to allow personal possession of less than four ounces of marijuana in the home, and to allow a person to carry, purchase, and give away one ounce of marijuana at a time.

From the FNSB’s perspective, it appears to be important to create some sort of limit on this personal-use provision within the Act. As the Act stands, it would appear that an arguably-legal barter market is created as of February 24, 2015 and so long as the marijuana is grown and processed by an individual in their home, given to another person one ounce or less at a time, and the exchange is for something other than money, the transaction would be perfectly legal. Clearly, this type of system cannot be properly characterized as “personal use.” Moreover, this type of system undermines the commercial establishment structure that the Act attempts to set forth in other provisions of the Act and would circumvent licensing, testing, and labelling requirements, among other things.

C. Change “remuneration” to “benefit.”

It may be possible to address some of the concerns outlined above by changing the term “remuneration” to “benefit,” then defining the word benefit. In this way, the Act could be restructured to allow a person to give their personal marijuana away for free, with the hope being that fewer people would want to engage in such a transaction and the possibility of a “personal use” barter exchange market would be restricted.

6. INPUT ON WHETHER THE STATE SHOULD ESTABLISH RULEMAKING UNDER THE ALCOHOLIC BEVERAGES CONTROL BOARD, CREATE A MARIJUANA CONTROL BOARD, OR PROCEED WITH NO RULEMAKING UNDER ANY BOARD.

The FNSB is aware that there may be contention at the legislative level as to whether the rulemaking called for by AS 17.38 will occur through the Alcoholic Beverages Control (“ABC”) Board or through a newly-created Marijuana Control Board (“MCB”). The FNSB is further aware that there may be proponents of doing nothing to address the rulemaking provisions of AS 17.38 at the legislative level.

¹¹ AS 17.38.010(c).

¹² *Noy*, 83 P.3d at 540 and 543.

Of note, AS 17.38.090's rulemaking provisions are mandatory. Under that statute, the state is required to take several actions by several deadlines. By default, at a minimum, those mandatory rulemaking deadlines fall to the ABC Board. Because of this default provision, it is the FNSB's understanding that the ABC Board has been and continues to work toward meeting the Act's various deadlines. Whether the responsibilities remain with the ABC Board or are transferred to a new MCB, the FNSB's input is limited to expressing a preference that the state meet its deadlines and implement the scheme envisioned by the Act.

7. OTHER INPUT.

- A. The FNSB can see value in the state considering potential conflicts between Alaskan communities, in particular neighboring communities, created by local regulation being different in each community. The FNSB would suggest considering a mediation-type role to be played by the state board, whether the ABC Board or the MCB, where a community could take a complaint that one community's regulations, enforcement, or lack of enforcement are negatively impacting another community.
- B. The FNSB would suggest that edibles be regulated such that each individual serving be limited to five milligrams of THC, that each individual serving be individually packaged, and that some sort of identifier be required to be a part of the edible itself so as to distinguish it from its non-THC containing counterpart, even outside of its packaging (i.e. each edible must be stamped with a certain recognizable impression or every edible containing THC must be manufactured in a certain recognizable shape, for example, the shape or impression of a marijuana leaf).
- C. The FNSB believes the state should focus its efforts on addressing the eight concerns set forth within U.S. Deputy Attorney General James Cole's memorandum dated August 29, 2013, including laws and regulations to prevent the sale of marijuana to minors and outside of the state of Alaska, preventing violence in the marijuana industry, and preventing drugged driving.

8. INPUT ON WORK DRAFT OF UNNUMBERED SENATE BILL DATED JANUARY 24, 2015.

The FNSB has many areas of concern with respect to the work draft senate bill. However, because that bill has not yet been introduced, the FNSB will provide only general input at this time.

- A. The FNSB does not understand the creation of a new series of marijuana establishments and a new scheme delineating how marijuana can move between the establishments. The new scheme created within this bill is less clear and comprehensive than that established by AS 17.38. In particular, the FNSB objects to the creation of the "marijuana boutique producer."¹³
- B. The FNSB strongly objects to the zoning restrictions set forth in this bill.¹⁴ The FNSB does not object to the state setting forth very general zoning-type restrictions, such as restricting a marijuana establishment from being within 200 feet of a church or school. However, the FNSB believes that zoning should be left to the municipalities in order that each municipality can determine where each type of establishment can best fit into each

¹³ Reference new sections beginning at page 7, line 25.

¹⁴ In particular, the FNSB strenuously objects to the provision set forth on page 5, lines 7-10.

individual community. Further, any zoning-type restrictions set forth by the state should allow the municipality to be more restrictive than those created by the state. In short, the FNSB wishes to retain zoning control to the greatest possible extent.

- C. The FNSB believes that the state should not attempt to restrict or designate the fees that a municipality may implement if it chooses to allow marijuana establishments. Pursuant to AS 17.38, municipality may regulate establishments up to and including banning them altogether. As such, if a municipality wishes to make local licensure cost prohibitive, the state should not restrict that.¹⁵ At a minimum, if the state chooses to designate municipal fees, such fees should be adjustable for inflation or other factors as contemplated by the original Act.¹⁶
- D. The FNSB objects to the work draft bill's removal of edibles from the definition of marijuana products.¹⁷
- E. Several provisions of this work draft bill appear to be directly contrary to the intent and language of the original Act, including some restrictions on personal consumption and growing. Other portions of the work draft bill appear to raise due process concerns.

Again, the FNSB thanks you for allowing us to provide our input at this early legislative stage. Should you have any questions, concerns, or request additional input, please do not hesitate to contact me.

Sincerely,



Wendy Doxey
Assistant Borough Attorney

cc: Mayor Luke Hopkins


¹⁵ Reference page 5, lines 30-31.

¹⁶ See AS 17.38.090(a)(2).

¹⁷ Reference page 23, line 7.

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MEMORANDUM

TO: REP. TILTON
FROM:  BROOKS CHANDLER
CC: RAY GILLESPIE
DATE: January 23, 2015
RE: *INITIAL ISSUES PERTAINING TO PROPOSITION 2*

I coordinated a teleconference with a group of 10 municipal attorneys and police chiefs (Fairbanks North Star Borough, City and Borough of Sitka, City and Borough of Juneau, Municipality of Anchorage, City of Soldotna) and private firms that represent Homer, Cordova, Nome, Dillingham and Unalaska among other communities to discuss initial issues for potential state legislation or local regulation related to legalization of possession, use, cultivation, manufacture and sale of marijuana in Alaska. Please bear in mind that our group does not purport to speak either for AML or the Alaska Municipal Attorneys Association as a whole.

We currently see a need for state legislation or at least discussion of state legislation addressing the following topics:

1. A "default" definition of "in public".
2. Presumptive concentration limits for DUI enforcement.
3. Implied consent for testing for DUI enforcement (assuming valid testing protocols become available).
4. Whether hash oil is considered marijuana.
5. The testing process and transportation for purposes of testing.

- 6. Regulation of edible marijuana products.**
- 7. Detail regarding weighing marijuana vs. marijuana concentrates for purposes of establishing what is "1 ounce" of marijuana.**
- 8. Allowing local option equivalent to Title 4 local options in two years.**
- 9. Marijuana use in so-called "private" clubs.**
- 10. Default provisions regarding a "local regulatory authority".**

There are many more issues surrounding this topic than set forth on this list and our understanding of them will continue to advance as we contact our colleagues both in Alaska and in Colorado whose marijuana law is currently the closest fit to Alaska law. Many of the communities impacted by legalized marijuana will be considering local legislation for adoption before the end of February.

We appreciate your efforts to solicit input and we hope to continue to communicate with you and your staff during the session. Our next teleconference will be on February 3. I am certain members of the group will be willing to review proposed legislation and provide coordinated comments as needed outside of scheduled teleconference sessions.

**MUNICIPAL ATTORNEY'S OFFICE
MUNICIPALITY OF ANCHORAGE
DRAFT COMMENTS (2-5-15)**

General Questions (Initiative language as approved by voters)

Intent to limit discussion/scope of work to the following sections: AS 17.38.040, 080, 100-110 & 900(definitions specific to municipal regulation and enforcement)

1. Should "municipality" be substituted for "local government"? What are the practical implications for using "municipality" in lieu of "local government"? What jurisdictions/entities would be omitted with this proposed substitution? Should we consider constructing a new definition in statute?

YES – CONSIDER CHANGE TO "MUNICIPALITY", SO LONG AS LEGISLATIVE LEGAL OR AG AGREES THAT AS 01.10.060, *Definitions*, AND/OR AS 29.71.800, *Definitions*, APPLIES:

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(13) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

SEE, ALSO – AS 29.04.010-.030. A DIFFERENT PERSPECTIVE MAY COME FROM NATIVE VILLAGES OR SIMILARLY SITUATED LOCAL COMMUNITIES AS TO WHETHER USING "LOCAL GOVERNMENT" INCLUDES THEM AND THUS WHETHER A SWITCH TO "MUNICIPALITY" EXCLUDES THEM.

THERE IS A DEFINITION FOR "LOCAL GOVERNMENT" IN AS TITLE 19 (Highways and ferries): AS 19.30.241(3) "local government" means an organized borough of any class, a unified municipality, or a city of any class.

2. Does the description of "public view" as referred to in AS 17.38.030 provide adequate guidance for municipalities/local governments for the purposes of drafting local ordinances? Should the existing language be amended?

DOES "PUBLIC VIEW" MEAN ONLY FROM PUBLIC PROPERTY AND RIGHTS OF WAY OR DOES IT MEAN FROM NEIGHBORING PROPERTY? IF I CAN SEE MY NEIGHBOR'S GROW FROM MY BACK PORCH, IS HE IN VIOLATION OF THE STATUTE? WE ASSUME IF WE CAN SEE IT FROM ANY PUBLIC PROPERTY, IT WOULD BE A VIOLATION. PUBLIC VIEW WOULD THEN INCLUDE VIEWING FROM ANY ROW, TRAIL, SIDEWALK, PARK, OPEN SPACE, AND ANY BUILDING OPEN TO THE PUBLIC (WOULD THIS THEN INCLUDE AN OFFICE BUILDING – IF I CAN SEE THE GROW WHILE VISITING MY DENTIST'S OFFICE?)

3. Should "in public" be explicitly defined in AS 17.38.900?

YES – SEE AS 11.81.900(52): "public place" means 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. SEE ALSO JUNEAU AND ANCHORAGE CODES, RECENTLY ENACTED.

4. Does there need to be a new subsection outlining "private clubs"? If so, how should the basic structure be constructed in order to provide sufficient direction to a/the board and municipalities/local governments without limiting their ability to adopt ordinances specific to their jurisdictions?

YES – FOR EXAMPLE, ANCHORAGE'S TOBACCO SMOKING ORDINANCE PROVIDES: AMC 16.65.005:

***Private club* means an organization (whether a legal entity or an informal association of persons) that is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and has been granted an exemption from**

the payment of federal income tax as a club under 26 U.S.C. Section 501.

PRIVATE CLUBS ARE ALLOWED FOR SMOKING TOBACCO, SO LONG AS THEY “are not licensed for the sale of alcoholic beverages under state law and are not places of employment; however, if an enclosed area is being used for a purpose, event, or function to which the general public is invited, then smoking is prohibited.”

NOTE, HOWEVER, PRIVATE BOTTLE CLUBS ARE BANNED LOCALLY:

AMC 8.35.416.090 - Prohibition of bottle clubs.

A. A person may not maintain a place in which alcohol beverages are received or kept, or to which alcoholic beverages are brought, for consumption by members of the public or by members of a club, corporation, or association, unless the person is authorized to do so under AS 04.11.

B. A person may not maintain, operate, or lease premises for the purpose of providing, for a consideration, a place for drinking alcoholic beverages by members of the public or other persons, unless the person is authorized to do so under AS 04.11.

C. For the purposes of this section, "consideration" includes but is not limited to cover charge, the sale of food, ice, mixers, or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverages.

D. Violation of this section is a class A misdemeanor.

THE STATE SHOULD HAVE A DEFAULT POSITION ON PRIVATE CLUBS FOR MARIJUANA CONSUMPTION; BUT LET MUNICIPALITIES ADOPT THEIR OWN ALLOWANCE, CONDITIONS, OR BAN.

5. Are there changes needed to all or any part of AS 17.38.110 (*particularly (a)-(e)*)

SUBSECTION (b) ALLOWS FOR LOCAL GOVERNMENTS TO ESTABLISH CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE GOVERNING THE TIME, PLACE AND MANNER OF A MARIJUANA ESTABLISHMENT OPERATING WITHIN ITS JURISDICTION. THERE

SHOULD BE AN ADDITION THAT ALSO ALLOWS CRIMINAL PENALTIES. MANY ALCOHOLIC BEVERAGE TIME, PLACE, AND MANNER VIOLATIONS ARE TREATED AS CRIMINAL OFFENSES. EXAMPLES INCLUDE VIOLATING HOURS OF OPERATION, ALLOWING MINORS ON PREMISES, PRICING AND MARKING OF PRODUCT, AND SELLING TO INTOXICATED PERSONS.

Specific to HB 75 (29-LS0345\H)

1. Should the stipulation for the creation of a local advisory board (Section 12 - Pg. 4, lines1-6) be removed?

YES, ABSOLUTELY

Specific to SB UNNUMBERED (29-LS0405\A)

1. Are there recommend changes to Sec. 14 of this bill (Pg. 5, lines 27-31 through pg. 6, lines 1-7)?

YES – WHY IS THERE A CAP ON LOCAL FEES AND WHY SHOULD THE “BOARD” (PRESUMABLY THE MARIJUANA CONTROL BOARD, BUT ALSO A LOCAL BOARD?) BE COLLECTING THOSE FEES? THESE ARE LOCAL FEES FOR LOCAL PROCESSING OF APPLICATIONS AND LICENSES. ANY MUNICIPAL FEES SHOULD BE COLLECTED AND RETAINED BY THE MUNICIPALITY, TO COVER ITS COSTS. AND, WE DON’T NEED THE BUREAUCRACY OF TRANSMITTING FEES BETWEEN THE BOARD AND THE MUNICIPALITY. THE BOARD WOULD PROBABLY EVEN MAKE A DEDUCTION FROM THOSE PAID FEES FOR “ADMIN COSTS” OF ITS OWN, REDUCING THE ABILITY OF THE MUNICIPALITY TO MAKE FULL USE OF THE COLLECTED FEES. RE THE CAP ON FEES – NOT AWARE THIS IS DONE IN OTHER AREAS OF LAW; E.G. THERE ARE NO STATE IMPOSED CAPS ON LOCAL ZONING PERMIT APPLICATIONS. ACTUAL COSTS WILL VARY FROM MUNICIPALITY TO MUNICIPALITY; AN ARTIFICIALLY IMPOSED CAP MAY PREVENT MUNICIPALITIES FROM COLLECTING THEIR ACTUAL COSTS.

NOT SURE THAT THE DELETION ON PAGE 6, LINES 2-7 IS LEGALLY DEFENSIBLE. WE WOULD WANT TO HEAR THE RATIONALE FOR THIS DELETION.

2. Are there changes needed to all or any part of AS 17.38.110 (*particularly (a)-(e)*) (Pg. 4, line 25 through Page. 7, line 24)?

SUBSECTION (A) – LINE 27 “BY”. WHAT IS THIS SECTION TRYING TO SAY WHEN IT ADDS “BY....LICENSEE” TO EACH TYPE OF FACILITY. IT SEEMS TO BE SAYING THAT THE MUNICIPALITY CAN PROHIBIT LICENSEES FROM OPERATING A MARIJUANA ESTABLISHMENT. ODDLY, THIS SUGGESTS THE MUNICIPALITY CANNOT BAN OTHER KINDS OF OPERATORS FROM OPERATING A MARIJUANA ESTABLISHMENT. HOWEVER, THE MUNICIPALITY MAY WANT TO BAN THE ESTABLISHMENTS, NOT JUST ESTABLISHMENTS OPERATED BY LICENSEES. IT READS AWKWARDLY.

3. Should the category of “marijuana boutique producer license” be eliminated (Pg. 8, line 1) or should the zoning prohibition relating to that license category be removed (Pg. 5, lines 7-10)?

YES – WHAT IS THE PURPOSE OF CREATING THIS SPECIAL CATEGORY AND EXEMPTING IT FROM LOCAL CONTROL? THE DEFINITION ALLOWS THIS GROWER TO HAVE UP TO 50 PLANTS AND SELL WHOLESALE. THIS IS A HUGE LOOPHOLE. 1 PLANT IS GOING TO PRODUCE SOMETHING BETWEEN 1-2 LBS. IN A YEAR. ASSUME 50 LBS, WHICH EQUALS 800 OUNCES. ASK YOUR LOCAL POLICE WHAT THE STREET VALUE OF THAT IS.

ALSO, BARRING RESTRICTION BY MUNICIPALITIES MAY RUN AFOUL OF DRUG FREE SCHOOL ZONE LAWS. ALSO, IT PROBABLY CONTRADICTS 17.38.110(A) WHICH ALLOWS A LOCAL GOVERNMENT TO PROHIBIT ANY OR ALL OF 4 CATEGORIES OF MARIJUANA BUSINESSES. WHAT IS THE PURPOSE OF CHANGING THE NAMES TO NEW CATEGORIES?

PROPOSED 17.38.220(A)(3) SPECIFICALLY ALLOWS A HOLDER OF THE LICENSE TO “PERFORM SOLVENT BASED EXTRACTIONS.” BECAUSE THIS METHOD CAN BE VERY DANGEROUS, ISSUANCE FOR THIS KIND OF PROCESS SHOULD BE TIED TO MEETING CERTAIN CRITERIA.

REGARDING BOUTIQUE: IT SAYS MUNICIPALITIES CAN RESTRICT ONLY TO THE DEGREE ALLOWED BY 17.38.400. THAT SECTION, IN TURN, SAYS THAT THE BOARD CANNOT ISSUE A LICENSE FOR A RETAILER OR BOUTIQUE IF IT WOULD BE WITHIN 200 FEET OF SCHOOL GROUNDS. MORE LEGAL RESEARCH MAY NEED TO BE DONE ON THIS. THE WHOLE DRUG FREE SCHOOL ZONE ISSUE IS PERHAPS TIED TO FEDERAL FUNDING AND A TRIGGER FOR FEDERAL ENFORCEMENT. AS SUCH, THE LIMIT IN FEDERAL LAW IS 1000 FEET, NOT 200, AND MUNICIPALITIES SHOULD BE FREE TO RESTRICT IT AS THEY SEE FIT ACROSS ALL CATEGORIES.

THIS RESEARCH IS NOT COMPLETE, BUT HERE IS AN EXAMPLE FEDERAL CITATION:

21 USCA § 860. Distribution or manufacturing in or near schools and colleges

(a) Penalty

Any person who violates section 841(a)(1) of this title or section 856 of this title **by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within ONE THOUSAND FEET of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility,** is (except as provided in subsection (b) of this section) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

THE FEDERAL DOJ MEMO TIED FEDERAL NON-INTERFERENCE IN LEGAL MARIJUANA STATES TO HAVING A STRICT LOCAL

REGULATORY REGIME. AMONG DOJ'S CONTINUED AREAS OF STRONG INTEREST AND WHICH DOJ WOULD ENFORCE WOULD BE MARIJUANA INVOLVING YOUTH. YET, HERE IS THE STATE AUTHORIZING MARIJUANA STORES WITHIN 200 FEET OF SCHOOLS! VS. THE 1000 FEET THAT – PER THE ABOVE – IS A FEDERAL ENHANCED SENTENCING FACTOR.

IN ADDITION TO CHURCHES, SCHOOLS AND PRISONS, ANY STATE LEGISLATION SHOULD ADD “YOUTH CENTERS, HALF-WAY HOUSES, ALCOHOL TREATMENT CENTERS, RECREATIONAL CENTERS.” IT SHOULD PROBABLY DEFINE THE EXISTING TERMS AND BE POLITICALLY CORRECT/LEGALLY COMPREHENSIVE. E.G. “PLACE OF WORSHIP” INSTEAD OF “CHURCH.”

ORDINANCE NO. 5964

**AN ORDINANCE AMENDING FAIRBANKS GENERAL CODE CHAPTER
46 OFFENSES BY ADDING A NEW SECTION TO PROHIBIT THE
CONSUMPTION OF MARIJUANA IN A PUBLIC PLACE**

WHEREAS, Ballot Measure 2 – An Act to Tax and Regulate the Production, Sale and Use of Marijuana, codified as Alaska Statute 17.38, providing for the legalization of marijuana, was passed by the voters in the recent state election and certified on November 28, 2014, by the State of Alaska, Division of Elections; and

WHEREAS, newly enacted AS 17.38.040 states as follows:

Public consumption banned, penalty.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

; and

WHEREAS, the state statute does not define “public”; and

WHEREAS, the state statute does not discuss or mandate any enforcement mechanism; and

WHEREAS, the proponents of the effort to legalize marijuana referred to themselves as the “campaign to Regulate Marijuana Like Alcohol; and

WHEREAS, the Fairbanks General Code, FGC Sec. 46-80, bans the consumption of alcohol in a certain public places; and

WHEREAS, the effective date of the legislation enacted by Ballot Measure 2 is February 24, 2015; and

WHEREAS, within the City of Fairbanks, the enforcement of the state’s smoking in public statute would be the responsibility of the Fairbanks Police Department; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. Fairbanks General Code Chapter 46 Offenses is amended by adding the following section to Article II:

Sec. 46-44. Consuming marijuana in public place.

(a) It is unlawful for any person to knowingly consume marijuana when the person is:

- (1) On, in, or upon any public place, except as permitted by ordinance, regulation, statute or permit; or
- (2) Outdoors on property adjacent to a public place, and without consent of the owner or person in control thereof.

(b) For purposes of this section, the following definitions apply:

- (1) *Consume* has the meaning, in all conjugate forms, of “consumption” set forth in AS 17.38.900.
- (2) *Marijuana* has the meaning set forth in AS 17.38.900.
- (3) *Public place* means 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 arena, 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.

(c) Violation of this section is a minor offense punishable by a fine of \$100.00. Disposition of this offense may be without court appearance pursuant to AS 29.25.070 and the Alaska Minor Offense Rules upon payment of the \$100 fine and payment of the state surcharge required by AS 12.55.039 and AS 29.25.074. This fine may not be judicially reduced.

SECTION 2. That the effective date of this Ordinance shall be the ____ day of February 2015.

John Eberhart, City Mayor

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, MMC, City Clerk

Paul J. Ewers, City Attorney

Presented By:
City Manager

Action Taken:
Yes ___
No ___
Abstain ___

CITY OF NOME, ALASKA

ORDINANCE NO. O-15-02-07

AN ORDINANCE ADOPTING CHAPTER 3.07 OF THE NOME CODE OF ORDINANCES

WHEREAS, the City of Nome has the power to regulate the conduct of persons within City limits pursuant to a number of provisions of the Nome Code of Ordinances; and,

WHEREAS, the passage of Ballot Measure #2 in the 2014 State of Alaska Election has provided for the legalization of various marijuana-related activities on a specific timeline; and,

WHEREAS, the City wishes to be proactive in regulating the marijuana-related behaviors that can be regulated by individual municipalities; and,

WHEREAS, in order for the City to regulate such behaviors, an applicable ordinance must be in place; and,

WHEREAS, on January 26, 2015, the City Council requested that such an ordinance be drafted by the City Attorney and the Police Chief.

NOW, THEREFORE, BE IT ORDAINED BY THE NOME COMMON COUNCIL THAT CHAPTER 3.07 OF THE NOME CODE OF ORDINANCES BE ENACTED AS FOLLOWS:

Section 1. Classification. This is a Code ordinance.

Section 2.

**Chapter 3.07
MARIJUANA REGULATION**

Sections:

- 3.07.010 Advisory board—Established—Membership.
- 3.07.020 Advisory board—Powers and authority.
- 3.07.030 State laws and regulations adopted.
- 3.07.040 Marijuana consumption in public prohibited.
- 3.07.050 Marijuana consumption in vehicles prohibited.
- 3.07.060 Marijuana smoke as nuisance.
- 3.07.070 Production or sale of edible marijuana products.
- 3.07.080 Possession, sale, or production of marijuana concentrates.
- 3.07.090 Allowing unlawful marijuana use prohibited.

- 3.07.100 Marijuana use without consent of property owner prohibited.
- 3.07.110 Violation—Enforcement
- 3.07.120 Definitions.

3.07.010 Advisory board—Established—Membership.

- (a) There is established a Nome marijuana advisory board consisting of five members. The mayor shall appoint the members of the board, subject to confirmation by the city council. Terms shall expire upon resignation or reappointment. All board members serve at the pleasure of the Mayor.
- (b) All members of the board shall be residents of the city during the term of their appointment. Members of the board may hold municipal, state or federal office, either elective or appointive.
- (c) Two members of the board constitute a quorum for the conduct of business. The board shall meet at least once each year, and at such other times as directed by the city council. (Ord. O-93-6-6 § 1 (part), 1994)

3.07.020 Advisory board—Powers and authority.

- (a) The board shall conduct studies and investigations to insure the proper administration of marijuana regulations in a manner that will protect the public health, safety and welfare, and shall report to the city council at least one time each year.
- (b) The board shall be advisory by nature, and shall possess none of the legal powers or authorities of the city unless specifically delegated by ordinance hereafter. (Ord. O-93-6-6 § 1 (part), 1994)

3.07.030 State laws and regulations adopted.

All laws and regulations of the state of Alaska regarding licensed marijuana sales, service, distribution, and consumption apply within the city of Nome unless otherwise stated in this chapter.

3.07.040 Marijuana consumption in public prohibited.

No person shall consume marijuana, in any form, in any public place.

3.07.050 Marijuana consumption in vehicles prohibited.

Marijuana consumption in or on motor vehicles, on the deck or in the wheelhouse of a watercraft, or in an aircraft is prohibited.

3.07.060 Marijuana smoke as nuisance.

No person shall disturb the peace and privacy of another by marijuana odors, smoke, or vapors that drift onto the property of another, including into any residential or commercial unit rented, leased, or owned by another.

3.07.070 Production and sale of edible marijuana products.

- (a) No person shall solicit or engage in the production, sale, barter or exchange of any edible marijuana product.
- (b) No person shall possess, sell, barter, or exchange any edible marijuana product unless the product contains a label accurately identifying all information required by 21 CFR 101 as well as the amount of THC in a serving.
- (c) All edible marijuana products must be contained in child-resistant packaging except for when being actively consumed.

3.07.080 Production of marijuana concentrates.

No person shall manufacture marijuana concentrates through use of a solvent-based extraction method using a substance other than vegetable glycerin.

3.07.090 Permitting unlawful marijuana use prohibited.

No owner, operator, manager or other person in control of any area where marijuana use is prohibited by this chapter shall allow or permit unlawful use of marijuana on said premises.

3.07.100 Marijuana use without consent of property owner prohibited.

(a) No person shall consume marijuana on private property without the affirmative consent of the property owner is prohibited.

(b) If a person has a possessory interest in private property but is not the owner and the owner prohibits the use or consumption of marijuana, use or consumption of marijuana on or in that property is prohibited.

3.07.110 Enforcement.

(a) A person who violates any provision of this chapter is guilty of an infraction, and upon conviction shall be fined as set forth in NCO Section 1.20.040 or if no fine is there established, not more than five hundred dollars plus any surcharge required to be imposed by AS 12.55.039. Each violation is a separate offense.

(b) Notwithstanding the availability of any other remedy provided by the provisions of this chapter, the city or any person aggrieved by a violation of this chapter may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.

3.07.120 Definitions.

As used in this chapter:

"Child-resistant" means packaging specially constructed to be significantly difficult for children under ten years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 as well as opaque so that the packaging does not allow the product to be seen without opening the packaging material.

"Edible Marijuana Product" means any marijuana product which is intended to be chewed or swallowed, including but not limited to, any type of food, drink, pill or product intended for human consumption that contains any form of marijuana. Edible marijuana product does not include marijuana flowers.

"Marijuana" means all the 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, 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, cake made from the seed of the plant, sterilized seeds of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

"Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for or for the ingesting, inhaling, or otherwise introducing marijuana into the human body.

"Marijuana concentrates" means any oil, liquid, or other substance created by extracting cannabinoids from marijuana through the use of a solvent other than water for the purpose of increasing the strength or proportion of the cannabinoids.

"Minor" means any person under twenty-one years of age.

"Public place" means any place to which the public or a substantial group of persons has access, including but not limited to streets, highways, alleys, sidewalks, transportation facilities, schools, places of amusement or business, food and beverage service facilities, offices, retail stores, parks, playgrounds, hallways, lobbies, vehicles available for commercial hire, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence and waterways. All property owned or leased by the city shall be considered a public place regardless of the public's access.

Section 3. Effective date. This ordinance is effective upon passage.

APPROVED and **SIGNED** the 23rd day of February, 2015.

DENISE MICHELS
Mayor

ATTEST:

TOM MORAN
City Clerk

Introduced by: City Manager Hannan
Date: February 24, 2015
Public Hearing: March 10, 2015
Action:

Vote:

Yes:

No:

CITY OF PALMER, ALASKA

Ordinance No. 15-013

An Ordinance of the Palmer City Council Enacting Palmer Municipal Code Chapter 8.11 Prohibiting Consumption of Marijuana in a Public Place

Whereas, Ballot Measure 2 – An Act to Tax and Regulate the Production, Sale and Use of Marijuana, and codified as Alaska Statutes 17.38, provides for the legalization of marijuana, was passed by the voters in the recent state election and certified on November 28, 2014, by the State of Alaska, Division of Elections; and

Whereas, newly enacted AS 17.28.040 states:

AS 17.28.040 Public consumption banned.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

Whereas, the state statute does not define "public"; and

Whereas, the state statute does not discuss or mandate any enforcement mechanism;
and

Whereas, the effective date of the state marijuana statute is February 24, 2015.

Now, therefore:

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Chapter 8.11 is hereby enacted to read as follows:

Chapter 8.11
PROHIBITING CONSUMPTION OF MARIJUANA IN A PUBLIC PLACE

8.11.010 Definitions.

For purposes of this chapter, the definitions of the words and phrases below shall apply:

- A. Consume shall have the meaning, in all conjugate forms, of "consumption" set forth in AS 17.38.900.
- B. Marijuana shall have the meaning set forth in AS 17.38.900.
- C. Public place means 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, bike or pedestrian trails, transportation facilities, parking areas, sports arenas, schools, places of business or amusement, shopping centers, malls, parks, park trails, playgrounds, prisons, hallways, lobbies, doorways and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence, or while occupying any type of motor vehicle unless the vehicle is on the private property of the registered owner of said vehicle.

8.11.020 Consuming marijuana in a public place.

- A. It is unlawful for any person to knowingly consume marijuana in a public place or when the person is outdoors on private property adjacent to a public place or private place of another without consent of the owner or person in control thereof.
- B. Violation of this section is an offense punishable by the fine established in the current, adopted budget.

8.11.030 Marijuana oil extraction-prohibited.

- A. Any method to process oil or any substance from marijuana using an extraction method is hereby prohibited.
- B. Extraction is defined as using a chemical, series of chemicals or fluid or any other method to extract oil or another substance from a marijuana plant.
- C. Any person or business that processes marijuana oil using an extraction method is in violation of this section and subject to the fine established in the current, adopted budget.

Section 4. Effective Date. Ordinance No. 15-011 shall take effect upon adoption by the City of Palmer City Council.

Passed and approved this _____ day of _____, 2015.

DeLena Goodwin Johnson, Mayor

Janette M. Bower, MMC, City Clerk

CITY OF UNALASKA
UNALASKA, ALASKA

ORDINANCE NO. 2015-04

AN ORDINANCE OF THE UNALASKA CITY COUNCIL AMENDING THE UNALASKA CODE OF ORDINANCES TO CREATE A NEW CHAPTER 11.28 FOR THE REGULATION OF MARIJUANA USE.

BE IT ENACTED by the City Council of the City of Unalaska:

Section 1: **Form.** This is a Code ordinance.

Section 2: **Amendment of Title 11.** Title 11 Health and Safety of the Unalaska Code of Ordinances is amended by the addition of a new Chapter 11.28 Marijuana Regulation to read as follows:

Chapter 11.28

MARIJUANA REGULATION

- 11.28.010 **Definitions.**
- 11.28.020 **Local regulatory authority.**
- 11.28.030 **Remedies.**
- 11.28.040 **Marijuana use in public places prohibited.**
- 11.28.050 **Allowing unlawful marijuana use prohibited.**
- 11.28.060 **Marijuana possession and use under the age of 21 prohibited.**
- 11.28.070 **Unregistered commercial cultivation of marijuana prohibited.**

11.28.010 Definitions.

“Business” means any natural person or legal entity such as, without limitation, a business-for-profit corporation, nonprofit corporation, partnership, limited liability company or trust that undertakes to provide goods or services to the public or to persons who are members of a private group that is eligible to obtain the goods or services, regardless of whether the business exists or is conducted for the purpose of making a profit.

“Marijuana” means all parts of the plant of the genus cannabis whether grown 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.

“Public place” means any area to which the public is invited or into which the public is permitted, including, but not limited to, educational facilities, entertainment, food and beverage services, offices, retail stores, common areas in multi-unit buildings such as

lobbies, stairwells and hallways, transportation facilities and vehicles accessible to the general public, parks, public rights-of-way, shorelines, waterways, tidelands, as well as all city-owned property.

“Commercial cultivation” means the cultivation of more than six marijuana plants, or more than three mature, flowering marijuana plants:

- (a) in any non-dwelling structure;
- (b) in a dwelling unit or in any non-dwelling unit area within a dwelling;
- (c) if cultivated outside of a structure, upon the smallest recorded subdivision of the land; or
- (d) by a business.

This chapter also adopts the definitions contained in UCO Chapter 8.06

11.28.020 Local Regulatory Authority.

The city council is designated as the “local regulatory authority” as that term is used in Alaska Statutes Chapter 17.38 and any implementing legislation or rule-making.

11.28.030 Remedies.

A. The city may cite any violation of this chapter as a minor offense. The fine for a minor offense citation may not be reduced below the fine amount established by ordinance.

B. Any person aggrieved by a violation of this chapter may bring a civil action against a person who violates this chapter and may recover, for each violation, a civil penalty not to exceed the fine amount established by ordinance.

C. The city or any person aggrieved by a violation of this chapter may bring an action to enjoin a violation notwithstanding the availability of any other remedy.

11.30.040 Marijuana use in public places prohibited.

Use or consumption of marijuana in a public place is prohibited. This section is not intended to restrict a property owner from further restricting use of marijuana. A fine of \$100 shall be assessed for violation of this section.

11.30.050 Allowing unlawful marijuana use prohibited.

No person who manages, oversees, controls, or has an ownership interest in any business shall allow marijuana use in violation of this chapter in or on the premises of the business or on property owned, leased, or rented by the business. A fine of \$100 shall be assessed for a first violation of this section. Subsequent violations on the same property or premises in a twelve-month period shall be assessed a fine of \$500.

11.30.060 Marijuana possession and use under the age of 21 prohibited.

No person under 21 years of age shall possess or use marijuana. A fine of \$100 shall be assessed for a first violation of this section. Subsequent offenses in a twelve-month period shall be assessed a fine of \$300.

11.30.070 Unregistered commercial cultivation of marijuana prohibited.

No person shall commercially cultivate marijuana unless the facility and cultivator are validly registered under AS 17.38.100. Each unlawfully cultivated plant shall be considered a separate violation. Each violation of this section shall incur a fine of \$500.

Section 3. Amendment to Minor Offense Table. The city clerk is instructed to update the city's minor offense table in accordance with this ordinance and provide notice thereof to the Alaska Court System.

Section 4. Effective Date. This ordinance is effective upon passage.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS _____ DAY OF _____, 2015.

HON. SHIRLEY MARQUARDT
MAYOR

ATTEST:

CATHERINE HAZEN, CITY CLERK

1 Code Ordinance

By: Council Member Stu Graham

Introduced:

Public Hearing:

Action:

Vote:

2
3
4
5
6
7 **City of Wasilla**
8 **Ordinance Serial No. 15-08**
9

10 **An ordinance of the Wasilla City Council adopting Wasilla Municipal Code, Chapter 9.40**
11 **Regulation of Marijuana, pertaining to the manufacture, transport, possession, and use of**
12 **marijuana and substances derived from marijuana.**
13

14 Whereas, the voters of the Alaska recently passed Ballot Measure 2, An Act to Tax and
15 Regulate the production, Sale, and use of marijuana, and which would be codified as Alaska
16 Statute 17.38 et seq.; and
17

18 Whereas, AS 17.38.110, "local control" in subsection (a) provides: "A local government
19 may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing
20 facilities, or retail marijuana stores through the enactment of an ordinance or voter initiative";
21 and
22

23 Whereas, the personal use of marijuana as described in AS 17.38.020 will not be affected
24 by this ordinance; and
25

26 Whereas, enactment of AS 17.38 is phased in with the first actions under said statute
27 becoming effective in late February 2015; and
28

29 Whereas, State regulations influencing actions permitted beginning in late February 2015
30 will not be in place by the time said actions are allowed by passage of the statewide voter
31 initiative; and
32

33 Whereas, the voters in the City of Wasilla precincts voted in opposition to Ballot
34 Measure 2; and
35

36 Whereas the Wasilla City Council is charged with enacting law to best assure the public
37 health and safety; and
38

39 Whereas; the Wasilla City Council must enact regulations which express the will of the
40 voters of the city of Wasilla.
41

42 **Section 1. Classification.** This ordinance is of a general and permanent nature and shall
43 become part of the city code.
44

45 **Section 2. Adoption of chapter.** WMC 9.40, Regulation of Marijuana, is hereby adopted
46 to read as follows:
47
48

1
2 **9.40.070 Remedies and Penalties.**

3 (A) Remedies and penalties for violations of this chapter are as provided in
4 Chapter 1.20.

5 (B) Each full ounce or portion thereof in excess of the permitted amount shall
6 constitute basis for violation of this chapter and constitute a separate violation
7 pursuant to Chapter 1.20.

8 (C) Manufacturing of edible products and/or concentrates or derivatives shall
9 constitute a violation pursuant to Chapter 1.20.

10 (D) Any products found in violation of this chapter may be seized and held as
11 evidence to be used in any future proceeding and may be disposed of as appropriate
12 after their use for evidentiary purposes is no longer required, include in accordance
13 with Chapter 5.40.
14

15 **Section 3. Amendment of subsection. WMC 1.20.030, Disposition of Scheduled**
16 **Offenses—Fine Schedule, is hereby amended to add a fine for Excessive responses violations as**
17 **follows:**
18

Code Section	Description of Offense	Fine
9.40.030	Marijuana Manufacture	\$300
9.40.040	Marijuana Possession	\$100
9.40.050	Marijuana Transport	\$100
9.40.060	Marijuana Use	\$100

19
20 **Section 4. Effective date.** This ordinance shall take effect upon adoption by the Wasilla
21 City Council.
22

23 ADOPTED by the Wasilla City Council on -, 2015.
24
25

26
27 _____
28 BERT L. COTTLE, Mayor

29 ATTEST:

30
31 _____
32 KRISTIE SMITHERS, MMC, City Clerk
33

[SEAL]

CITY OF
WASILLA
 • ALASKA •

CITY COUNCIL LEGISLATION STAFF REPORT

Ordinance Serial No. 15-08: Adopting Wasilla Municipal Code, Chapter 9.40 Regulation of Marijuana, pertaining to the manufacture, transport, possession, and use of marijuana and substances derived from marijuana.

Originator: Council Member Stu Graham
 Date: 1/28/2015 Agenda of: 2/9/2015

Route to:	Department Head	Signature	Date
X	Chief of Police	<i>[Signature]</i>	2-2-15
X	Finance Director	<i>[Signature]</i>	2-2-15
X	Deputy Administrator	<i>[Signature]</i>	2/2/15
X	City Clerk	<i>[Signature]</i>	1-30-15
X	City Attorney	<i>[Signature]</i>	2/2/15

Reviewed by Mayor Bert L. Cottle: *[Signature]* 01:30:2015

Fiscal Impact: yes or no Funds Available: yes or no

Account name/number:
 Account Name Account # Dollar Amount
 Total: \$

Attachments: Ordinance Serial No. 15-08 (3 pages)
 Ballot Measure No. 2 Ballot Language (27 pages)

Summary Statement: Please see attached Ordinance Serial No. 15-08, for consideration by the City Council.

Staff Recommendation: Introduce and set for public hearing Ordinance Serial No. 15-08.

**CITY OF CRAIG
ORDINANCE NO. 663**

An Ordinance Establishing a Limited Moratorium on the Receipt or Processing of Applications, Permits, or Pending Approvals Pertaining to Marijuana Establishments.

Section 1. Classification. This is a non-code ordinance.

Section 2. Severability If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall be effective immediately upon adoption.

Section 4. Action. The Craig City Council finds the following.

WHEREAS, on November 4, 2014, the Alaskan voters approved a ballot measure legalizing the use of marijuana, and, with a State license, the operation of marijuana establishments, defined as cultivation, manufacturing, testing and retail facilities; and

WHEREAS, the initiative, which goes into effect on February 24, 2015, requires the State to begin accepting and processing applications for the registration of marijuana establishments within one year of the effective date of the act; and

WHEREAS, the initiative authorizes local governments to enact legislation concerning the time, place, and manner related to the operation of registered marijuana establishments, or the prohibition of marijuana establishments; and

WHEREAS, it is in the public's best interest that the Craig City Council thoughtfully consider and adopt legislation regulating marijuana establishments within the City of Craig; and

WHEREAS, the purpose of this moratorium is to allow the City of Craig a reasonable period of time to consider and enact legislation concerning the operation of commercial marijuana establishments in the Craig city limits.

NOW, THEREFORE, BE IT ENACTED BY THE CRAIG CITY COUNCIL:

Moratorium. The City of Craig shall accept no development permit application, proposal, or other documentation for a similar purpose, nor act on pending applications, proposals, or documentation for a similar purpose, pertaining to marijuana establishments, including marijuana cultivation, testing, and product manufacturing facilities and marijuana retail stores. The prohibition imposed by this section shall remain in effect until March 31, 2016.

Adopted this _____ day of _____, 2015.

Mayor Dennis Watson

ATTEST

Kassi Bateman, City Clerk

**CITY OF CRAIG
MEMORANDUM**

To: Craig City Council
From: Jon Bolling, City Administrator
Date: January 30, 2015
RE: Ordinance No. 663

Attached you will find Ordinance No. 663. The ordinance sets in place a moratorium on the establishment of marijuana cultivation, testing facilities, manufacturing, and retail sales stores until March 31, 2016. The purpose of the proposed moratorium is to allow the city council time to review and assess laws and regulations adopted by the State of Alaska between now and November 24, 2015 regarding marijuana use.

As the council is aware, Alaska voters approved Ballot Measure 2 last November. That ballot measure legalized the production, transport, and sale of marijuana in Alaska. In response to voter approval of the measure, the state's executive branch is facing a deadline of November 24, 2015 to put into place regulations governing the activities approved in Ballot Measure 2. In addition, between now and then, the Alaska Legislature may choose to pass legislation relating to marijuana that impacts the regulations written by the executive branch. All this means that if the State of Alaska uses its full allotted time to write and implement any new laws and rules on this matter, the City of Craig, and other municipalities around Alaska, will at that point decide on what, if anything, they wish to do locally in response to statewide law and regulations. As I have told the council in the past, Ballot Measure 2 gives local government wide latitude to regulate or prohibit marijuana activity, so long as those regulations are not, using the words of the ballot measure, "in conflict" with state statute and regulation.

Should Craig decide to implement rules of its own regulating or prohibiting some of the activities permitted by Ballot Measure 2, and if that decision includes modification of the city's zoning code, then a months-long process will need to occur to put that effort in place. Adoption of Ordinance No. 663 provides the city council and city staff time to respond to the State of Alaska's actions without being subject to statutory deadlines to process applications for commercial production and/or sale of marijuana within the city limits that would likely occur without the moratorium.

Recommendation

Approve Ordinance No. 663 at first reading.

**CITY OF CRAIG
ORDINANCE NO. 664**

**AMENDING SECTION 09.90 OF THE CRAIG MUNICIPAL CODE TO PROHIBIT
THE CONSUMPTION OF MARIJUANA IN A PUBLIC PLACE, AND ESTABLISHING
A PENALTY FOR VIOLATION**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CRAIG, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and the code sections adopted hereby shall become a part of the code of the City of Craig, Alaska.

Section 2. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall be effective immediately upon adoption.

Section 4. Action. The Craig City Council finds the following:

WHEREAS, Ballot Measure 2 – An Act to Tax and Regulate the Production, Sale and Use of Marijuana, and codified as Alaska Statutes 17.38, provides for the legalization of marijuana, was passed by the voters in the recent state election and certified on November 28, 2014 by the State of Alaska, Division of Elections; and

WHEREAS, newly enacted AS 17.38.040 states “Public consumption banned, penalty. It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100”; and

WHEREAS, the statute does not define “public”; and

WHEREAS, the statute does not discuss or mandate any enforcement mechanism; and

WHEREAS, proponents of the effort to legalize marijuana referred to itself as the “Campaign to Regulate Marijuana Like Alcohol”; and

WHEREAS, Craig Municipal Code section 5.05 bans the consumption of alcohol in a public, unlicensed place; and

WHEREAS, the effective date of the state marijuana statute is February 24, 2015; This ordinance adds a new section to the Craig Municipal Code, Section 09.90.040, as follows:

09.90.040 Consuming marijuana in a public place.

A. It is unlawful for any person to knowingly consume marijuana when the person is:

1. On, in or upon any public place, except as permitted by ordinance, regulation, statute or permit; or
2. Outdoors on property adjacent to a public place, and without consent of the owner or person in control thereof.

B. For purposes of this section, the definitions of the words and phrases below shall apply:

1. *Consume* shall have the meaning, in all conjugate forms, of "consumption" set forth in AS 17.38.900.
2. *Marijuana* shall have the meaning set forth in AS 17.38.900.
3. *Public place* means 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, jails, and hallways, lobbies, doorways and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

C. Violation of this section is a minor offense punishable by a civil fine of \$100.

APPROVED this ____ day of _____, 2015.

Mayor Dennis Watson

ATTEST

Kassi Bateman, City Clerk

**CITY OF CRAIG
MEMORANDUM**

To: Craig City Council
From: Jon Bolling, City Administrator
Date: January 30, 2015
RE: Ordinance No. 664

Attached you will find Ordinance No. 664. The ordinance defines a public place for the purposes of the personal consumption of marijuana in Craig.

As the council is aware, Alaska voters approved Ballot Measure 2 last November. That ballot measure legalized the possession, commercial production, transport, and sale of marijuana in Alaska. In addition, the measure also prohibits consumption of marijuana in public places, but does not define the term public place.

The attached ordinance, drawing largely from text used in an ordinance adopted recently by the Municipality of Anchorage, defines public place. Establishing a definition will allow Craig Police Department officers the practical definition needed to enforce a ban on public consumption of marijuana, and inform marijuana users of places to avoid when consuming the substance.

The effective date of Ballot Measure 2 is February 24, 2015. As with proposed Ordinance No. 663, the council should consider putting in place measures to predictably implement the ballot measure at the local level.

Recommendation

Approve Ordinance No. 664 at first reading.

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2015-XXX

AN ORDINANCE AMENDING DILLINGHAM MUNICIPAL CODE TITLE 8 – HEALTH AND WELFARE BY THE ADDITION OF A NEW CHAPTER PROVIDING REGULATION OF MARIJUANA IN THE CITY OF DILLINGHAM, ALASKA

WHEREAS, on February 24, 2015 use and possession of less than an ounce of marijuana by persons over the age of 21 will be permitted by state law;

WHEREAS, use of marijuana in public places threatens the health, welfare, and peace of the City of Dillingham and its residents;

WHEREAS, marijuana possession and use by persons under the age of 21 remains a crime; and

WHEREAS, the City has a compelling interest in regulating intoxicating substances and their use;

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment to Title 8. That Dillingham Municipal Code Title 8 – Health and Safety is hereby amended by the addition of a new Chapter 8.30 – Marijuana Regulation to read as follows:

**Chapter 8.30.
MARIJUANA REGULATION**

Sections:

- 8.30.010 Definitions.**
- 8.30.020 Local regulatory authority.**
- 8.30.030 Violations and remedies.**
- 8.30.040 Marijuana use in public prohibited.**
- 8.30.050 Marijuana use in vehicles prohibited.**
- 8.30.060 Marijuana possession and use under the age of 21 prohibited.**

8.30.010. Definitions.

“Marijuana” means all parts of the plant of the genus cannabis whether grown 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.

“Public place” means in or upon any city-owned property, as well as any area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, bars, clubs, retail food production and marketing establishments, retail service establishments, theaters, waiting rooms, hallways, lobbies and common areas of hotels and multi-unit buildings, shorelines, waterways, and tidelands.

8.30.020. Local Regulatory Authority.

The city council is designated as the “local regulatory authority” as that term is used in Alaska Statutes Chapter 17.38 and any implementing legislation or rule-making.

8.30.030 Violations and remedies.

A. It is unlawful for any person who operates any restaurant, eatery, bar, hotel or other lodging, or retail establishment to permit marijuana use in violation of this chapter.

B. It is unlawful for any person to consume or use marijuana in violation of this chapter.

C. Any person aggrieved by a violation of this chapter or the city may bring a civil action against a person who violates this chapter and may recover a civil penalty not to exceed three hundred dollars per violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.

8.30.040. Marijuana use in public places prohibited.

Use or consumption of marijuana in a public place is prohibited. This section is not intended to restrict a property owner from further restricting use of marijuana.

8.30.050. Marijuana use in or on motor vehicles prohibited.

Marijuana use in or on motor vehicles, on the deck or in the wheelhouse of a watercraft, or in an aircraft is prohibited.

8.30.060. Marijuana possession and use under the age of 21 prohibited.

Possession and consumption of marijuana by persons less than 21 years of age are prohibited.

Section 3. Amendment to Title 1, Chapter 1.20, Section 1.20.040. That Dillingham Municipal Code 1.20.040 – Minor Offense Fine Schedule is hereby amended by the addition of new language to read as follows:

Code Section	Offense	Penalty/Fine
8.30.030(A)	Permitting unlawful marijuana use	100 first offense 500 second offense Must appear – 3 rd offense
8.30.030(B)	Unlawful marijuana use	100 first offense 100 second offense Must appear – 3 rd offense
8.30.060	Under-age Marijuana use or possession	100 first offense 200 second offense Must appear – 3 rd offense

Section 4. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council
on _____.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2015-XXX

AN ORDINANCE AMENDING DILLINGHAM MUNICIPAL CODE CHAPTER 8.10, PROHIBITION OF SMOKING IN PUBLIC PLACES, SECTION 8.10.010 DEFINITIONS

WHEREAS, on February 24, 2015 use and possession of less than an ounce of marijuana by persons over the age of 21 will be permitted under state law;

WHEREAS, use of electronic cigarettes and vaporizers for the consumption of tobacco and marijuana is increasing;

WHEREAS, these devices give off fumes and vapors containing chemicals omitted when tobacco and marijuana are smoked; and

WHEREAS, the public health risk posed by second-hand inhalation of these fumes and vapors is unknown;

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment to Section 8.10.010. That Dillingham Municipal Code Section 8.10.010 – Definitions is hereby amended to read as follows (Additions are underlined and emboldened and deletions are shown as strikethrough.):

8.10.010 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges and cabarets.

“Business” means a person (as defined in Sections 4.20.020 and 1.16.010) providing goods or services within the city for profit.

“Employee” means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

“Employer” means any person, partnership, corporation, including a municipal corporation, non-profit entity, business, association and trust, which employs the services of one or more individual persons.

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.

"Health care facility" means an office or institution providing care or treatment of diseases whether physical, mental, or emotional, or other medical physiological, or psychological conditions, including but not limited to hospitals, or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Places of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, hallways and vehicles. A private residence is not a place of employment unless it is used as a childcare, adult day care or health care facility.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a public place unless it is used as a childcare, adult day care or health care facility.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. The term restaurant shall include a bar area within a restaurant. Smoking would still be permissible in stand-alone bars.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning or carrying any lighted tobacco, ~~product and lighted cigar, cigarette, or pipe.~~ **nicotine, marijuana, or herbal product as well as the use of any vaporizer, electronic cigarette, or other device used to produce inhalable fumes or vapors from tobacco, nicotine, marijuana, or herbal product, or oils produced from these products.**

"Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Section 3. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

From: Laurie Sica
To: "Cathy Bremner"; "Kacie Paxton"; "Katy Suiter"; "Johanna Kinney"; "Ann Cornell"
Cc: clfreas@acsalaska.net; dsharrah@adak-ak.gov; tanderson@aeboro.org; eaglecty@aptalaska.net; kasaancityclerk@aptalaska.net; sptcity@arctic.net; tschoneman@bbbak.us; kring@borough.kenai.ak.us; clerk@ccalaska.com; pwhite@ci.delta-junction.ak.us; ddsnider@ci.fairbanks.ak.us; jjhovenden@ci.fairbanks.ak.us; "Tanya C. Clooten"; shuntington@ci.galena.ak.us; jjohnson@ci.homer.ak.us; mjacobsen@ci.homer.ak.us; rkrause@ci.homer.ak.us; Beth McEwen; ctriana@ci.soldotna.ak.us; "Shellie Saner"; cityclerk@ci.unalaska.ak.us; kpilande@ci.unalaska.ak.us; ahendrickson@ci.valdez.ak.us; smcmillen@ci.valdez.ak.us; spierce@ci.valdez.ak.us; ksmithers@ci.wasilla.ak.us; swhitelevy@ci.wasilla.ak.us; "Kim Stanker"; cperkins@city.kodiak.ak.us; dmarlar@city.kodiak.ak.us; mshuravloff-nelson@city.kodiak.ak.us; klwagner@cityofakp.org; lele.samuelu@cityofbarrow.org; "Lori Strickler"; cityclerk@cityofcordova.net; cityclerk3@cityofcordova.net; awilliams@cityofhoonah.org; office@cityofkaktovik.org; cityclerk@cityofkiana.org; svbilg@cityofklawock.com; cityclerk@cityofseldovia.com; "Collen Ingman"; "Melissa Henshaw"; sara@cityofsitka.com; cityclerk@craigak.com; gail_pieknik@denaliborough.com; cityclerk@dillinghamak.us; abenn@fnsb.us; atrickey@fnsb.us; nashford-bingham@fnsb.us; rvalenti@fnsb.us; akutan@gci.net; bciamieson@gci.net; cityofshhclerk@gci.net; ksmaccounting@gci.net; beckvregula@gmail.com; "Jeri Alakayak"; "City of Nulqsut"; emkcity@gmail.com; "Fannie Moore"; "Stacia Miller"; "Jennie Peter"; lana.gravelle@gmail.com; ms.michellewebb@gmail.com; nulatoclerk@gmail.com; Shagelukcity2010@gmail.com; tfahning@gmail.com; wainwrightcity@gmail.com; lori.ewing@gustavus-ak.gov; jcozzi@haines.ak.us; kkielsmeier@haines.ak.us; City.of.togiak-alaska@hotmail.com; cityofnewstuyahok@hotmail.com; jessicahuntercityclerscm@hotmail.com; kathryn_kristi1@hotmail.com; cmixon@houston-ak.gov; rrein@houston-ak.gov; sdukes@houston-ak.gov; amcolasson@kenai.city; smodigh@kenai.city; alishag@kqbak.us; deannag@kqbak.us; cityclerk@kingcoveak.org; Angela MacKenzie; Jessica Kilborn; Nova Javier; Sheila Smith; bhavrilla@kpb.us; jblankenship@kpb.us; "Michele Turner"; cityclerksaxman@kpunet.net; kateconley@lakeandpen.com; cityofnapaskiak@live.com; "Amy Bohmbach"; "Brenda Henry"; "Debra Wetherhorn"; "Elaine Flagg"; "Hillary Schwaderer"; "Jamie Newman"; "Joell Church"; "Lonnie McKechnie"; coaclerk@mtaonline.net; jonesBAR@muni.org; moserak@muni.org; schleusnerDF@muni.org; JNederhood@nomealaska.org; tmoran@nomealaska.org; elaineb.solomon@north-slope.org; jeannie.brower@north-slope.org; michelle.leavitt@north-slope.org; tonya.fereti@north-slope.org; "Tricia@northpolealaska.com"; "Kathy Weber"; mhenry@nwabor.org; satoruk@nwabor.org; cityofouzinkie@ouzinkie.org; "Janette Bower"; srife@palmerak.org; dthompson@petersburgak.gov; korear@petersburgak.gov; "E.Deach@Skagway.org"; "Michelle Gihl"; cityclerk@thornebay-ak.gov; cclerk@whittieralaska.gov; "Jennifer Rogers"; "Kim Flores"; cclerk56@yahoo.com; citychefornak@yahoo.com; cityofnewhalen@yahoo.com; cityofnunap@yahoo.com; copp_clerk@yahoo.com; mavor_kts@yahoo.com; russianmissioncityof@yahoo.com
Subject: RE: Marijuana Resolutions
Date: Monday, February 09, 2015 8:48:20 AM
Attachments: [Ord2014-50-Final_Marijuana_Establishment_Moratorium.pdf](#)
[Ord2014-51c-Final_Second_Hand_Smoke_Control_Code_re_Marijuana.pdf](#)

Here are two, a third is coming at our next meeting...the first was a moratorium on accepting applications for marijuana related retail establishments until October 19 – to allow time for the state to do their thing and our marijuana committee (4 Assembly 3 planning commissioners) to work out the details of how those retail establishments will be permitted in code (zoning, etc.)

The second one adds marijuana to our second hand smoke control code (no smoking in public places...)

The third to come is a fine schedule for above and including marijuana in the open container laws for vehicles...

More later! Laurie

From: Cathy Bremner [mailto:yakclerk@yakutatak.us]
Sent: Friday, February 06, 2015 4:04 PM
To: 'Kacie Paxton'; 'Katy Suiter'; 'Johanna Kinney'; 'Ann Cornell'
Cc: clfreas@acsalaska.net; dsharrah@adak-ak.gov; tanderson@aeboro.org; eaglecty@aptalaska.net; kasaancityclerk@aptalaska.net; sptcity@arctic.net; tschoneman@bbbak.us; kring@borough.kenai.ak.us; clerk@ccalaska.com; pwhite@ci.delta-junction.ak.us; ddsnider@ci.fairbanks.ak.us; jjhovenden@ci.fairbanks.ak.us; "Tanya C. Clooten"; shuntington@ci.galena.ak.us; jjohnson@ci.homer.ak.us; mjacobsen@ci.homer.ak.us; rkrause@ci.homer.ak.us; Beth McEwen; Laurie Sica; ctriana@ci.soldotna.ak.us; "Shellie Saner"; cityclerk@ci.unalaska.ak.us; kpilande@ci.unalaska.ak.us; ahendrickson@ci.valdez.ak.us; smcmillen@ci.valdez.ak.us; spierce@ci.valdez.ak.us;

ksmithers@ci.wasilla.ak.us; swhiteley@ci.wasilla.ak.us; 'Kim Stanker'; cperkins@city.kodiak.ak.us; dmarlar@city.kodiak.ak.us; mshuravloff-nelson@city.kodiak.ak.us; klwagner@cityofakp.org; Lele.samuelu@cityofbarrow.org; 'Lori Strickler'; cityclerk@cityofcordova.net; cityclerk3@cityofcordova.net; awilliams@cityofhoonah.org; office@cityofkaktovik.org; cityclerk@cityofkiana.org; sybilg@cityofklawock.com; cityclerk@cityofseldovia.com; 'Collen Ingman'; 'MelissaHenshaw'; sara@cityofsitka.com; cityclerk@craigak.com; gail_pieknik@denaliborough.com; cityclerk@dillinghamak.us; abenn@fnsb.us; atrickey@fnsb.us; nashford-bingham@fnsb.us; rvalenti@fnsb.us; akutan@gci.net; bcjamieson@gci.net; cityofshhclerk@gci.net; ksmaccounting@gci.net; beckyregula@gmail.com; 'Jeri Alakayak'; 'City of Nuiqsut'; emkcity@gmail.com; 'Fannie Moore'; 'Stacia Miller'; 'Jennie Peter'; lena.gravelle@gmail.com; ms.michellewebb@gmail.com; nulatoclerk@gmail.com; Shagelukcity2010@gmail.com; tfahning@gmail.com; wainwrightcity@gmail.com; lori.ewing@gustavus-ak.gov; jcozzi@haines.ak.us; kkielsmeier@haines.ak.us; City.of.togiak-alaska@hotmail.com; cityofnewstuyahok@hotmail.com; jessicahuntercityclerscm@hotmail.com; kathryn_kristi1@hotmail.com; cmixson@houston-ak.gov; rrein@houston-ak.gov; sdukes@houston-ak.gov; amcglasson@kenai.city; smodigh@kenai.city; alishag@kgbak.us; deannag@kgbak.us; cityclerk@kingcoveak.org; amackenzie@kodiakak.us; jkilborn@kodiakak.us; njavier@kodiakak.us; ssmith@kodiakak.us; bhavrilla@kpb.us; jblankenship@kpb.us; 'Michele Turner'; cityclerksaxman@kpunet.net; kateconley@lakeandpen.com; cityofnapaskiak@live.com; 'Amy Bohmbach'; 'Brenda Henry'; 'Debra Wetherhorn'; 'Elaine Flagg'; 'Hilary Schwaderer'; 'Jamie Newman'; 'Joell Church'; 'Lonnie McKechnie'; coaclerk@mtaonline.net; jonesBAR@muni.org; moserak@muni.org; schleusnerDF@muni.org; JNederhood@nomealaska.org; tmoran@nomealaska.org; elaineb.solomon@north-slope.org; jeannie.brower@north-slope.org; michelle.leavitt@north-slope.org; tonya.fereti@north-slope.org; 'Tricia@northpolealaska.com'; 'Kathy Weber'; mhenry@nwabor.org; satoruk@nwabor.org; cityofouzinkie@ouzinkie.org; 'Janette Bower'; srife@palmerak.org; dthompson@petersburgak.gov; korear@petersburgak.gov; 'E.Deach@Skagway.org'; 'Michelle Gihl'; cityclerk@thornebay-ak.gov; cclerk@whittieralaska.gov; 'Jennifer Rogers'; 'Kim Flores'; cclerk56@yahoo.com; citychefornak@yahoo.com; cityofnewhalen@yahoo.com; cityofnunap@yahoo.com; copp_clerk@yahoo.com; mayor_kts@yahoo.com; russianmissioncityof@yahoo.com
Subject: Marijuana Resolutions

Hello Fellow Clerks!

Hope this email finds you well and warm. We are snowless and the winds have picked up today. As it is on everyone's agenda or upcoming agenda the topic of Marijuana regulations for our local municipalities. If you have a draft resolution you would care to share with me I would appreciate it. Our Police Chief did get me the City of North Pole but it was requested to see more . In advance thank you so much for your time.

Stay warm and safe.

**Cathy Bremner, CMC Borough Clerk
City & Borough Of Yakutat
PO Box 160
Yakutat, AK 99689
907 784 3323 ext 104
www.yakutatak.us**

Presented by: The Manager
Introduced: 12/22/2014
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2014-51(c)

An Ordinance Amending the Second-hand Smoke Control Code to Regulate the Use of Marijuana.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 36.60.005 Definitions, is amended to read:

36.60.005 Definitions.

In this chapter:

...

Enclosed public place means an enclosed area or portion thereof to which the public or a substantial group of persons has access, including:

...

(16) Bars, private clubs, and any other enclosed place where marijuana or alcoholic beverages are sold, or food is offered for sale.

...

Marijuana has the same meaning as in Alaska Statute 17.38.900.

...

Smoking means inhaling or exhaling tobacco or marijuana smoke, or burning or carrying any lighted tobacco product or marijuana, or the use of any noncombustible product that provides a vapor of liquid nicotine or marijuana to the user, or relies on vaporization of any liquid or solid nicotine or marijuana. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name, but shall not include a tobacco substitute prescribed by a licensed physician, or a tobacco

product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes, and which is being marketed and sold solely for that approved purpose.

Section 3. Amendment of Section. CBJ 36.60.010 Smoking prohibited, is amended to read:

36.60.010 Smoking prohibited.

(a) Smoking is prohibited in:

...

(6) Private clubs that are licensed by the State of Alaska to sell marijuana or alcoholic beverages, or that offer food for sale, regardless of the number of employees; and

...

Section 4. Amendment of Section. CBJ 36.60.030 Exceptions; areas where smoking is not prohibited, is amended to read:

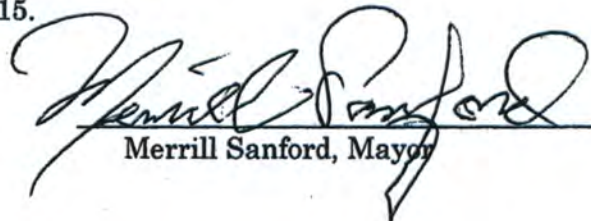
36.60.030 Exceptions; areas where smoking is not prohibited.

(a) Unless otherwise prohibited by State or Federal law, smoking is not prohibited in the following places:

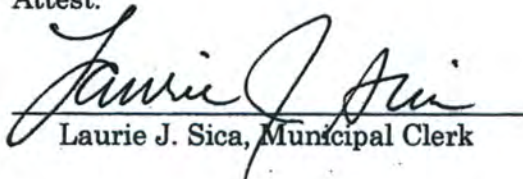
...

Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 2nd day of February, 2015.


Merrill Sanford, Mayor

Attest:


Laurie J. Sica, Municipal Clerk

Presented by: The Manager
Introduced: 12/22/2015
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2014-50

An Ordinance Imposing a Limited Moratorium on the Receipt or Processing of Applications, Permits, or Pending Approvals Pertaining to Marijuana Establishments.

WHEREAS, on November 4, 2014, the Alaskan voters approved a ballot measure legalizing the use of marijuana, and, with a State license, the operation of marijuana establishments, defined as cultivation, manufacturing, testing and retail facilities; and

WHEREAS, the initiative, which goes into effect on February 24, 2015, requires the State to begin accepting and processing applications for the registration of marijuana establishments within one year of the effective date of the act; and

WHEREAS, the initiative authorizes local governments to enact legislation concerning the time, place and manner related to the operation of registered marijuana establishments; and

WHEREAS, it is in the public's best interest that the CBJ thoughtfully consider and adopt land use regulations that ensure the orderly development and regulation of marijuana establishments within the CBJ; and

WHEREAS, the purpose of this moratorium is to allow the CBJ a reasonable period of time to consider and enact legislation concerning the operation of marijuana establishments in the CBJ.

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

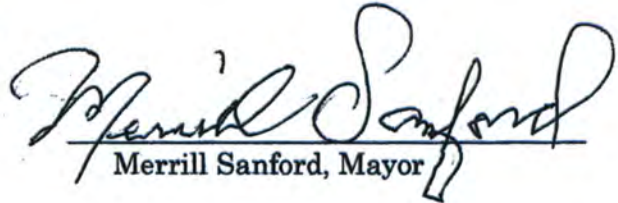
Section 1. Classification. This is a non-code ordinance.

Section 2. Moratorium. Notwithstanding CBJ 49.25.300 or any other section of the Land Use Code, no development permit application shall be accepted, or pending applications approved, pertaining to marijuana establishments, including marijuana cultivation, testing, and product manufacturing facilities and marijuana retail stores.

Section 3. Moratorium Period. The prohibition imposed by Section 2 shall be in effect through October 19, 2015.

Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 12th day of January, 2015.


Merrill Sanford, Mayor

Attest:


Laurie Sica, Municipal Clerk

Introduced by:	Mayor
Date:	12/09/14
Hearing:	01/06/15
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2014-40**

**AN ORDINANCE AMENDING KP.B 3.04.030, EMPLOYEE CONDUCT
REQUIREMENTS, TO ADDRESS THE PASSAGE OF BALLOT MEASURE NO. 2
LEGALIZING MARIJUANA, AND TO REFERENCE THE USE OF, OR IMPAIRMENT
BY, CONTROLLED SUBSTANCES**

WHEREAS, KP.B 3.04.030 was adopted in 1967 and sets forth basic borough employee conduct requirements; and

WHEREAS, in 1989, KP.B 3.04.030 was amended to specifically prohibit employees and volunteers from using, or being impaired by the use of, alcohol or illegal drugs at the workplace; and

WHEREAS, it is necessary to update this section of code to account for other types of drug use that may impair an employee's ability to conduct themselves in a manner fitting of a government employee; and

WHEREAS, specifically, Alaska Ballot Measure No. 2, An Act to Tax and Regulate the Production, Sale, and Use of Marijuana, was passed by the voters in the November 4, 2014 statewide election, making the use and possession of marijuana legal within certain limits; and

WHEREAS, the Kenai Peninsula, like many other areas of the state and the nation, has seen a rise in the abuse of prescription drugs and other controlled substances, and employee impairment by such substances is not addressed under the current version of KP.B 3.04.030; and

WHEREAS, impairment by drugs or alcohol in the workplace can result in an increased safety risk to employees, their co-workers, and the public; and

WHEREAS, updating KP.B 3.04.030 to appropriately address the range of substances that may cause impairment and impact an employee's conduct and ability to perform their job duties will bring the code into alignment with the current legal landscape regarding legal, controlled, and illegal drugs;

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

SECTION 1. That KPB 3.04.030 is hereby amended as follows:

3.04.030. Employee conduct requirements.

Borough employees are required at all times to conduct themselves in an exemplary manner befitting the public service in which they are employed. Employees and volunteers shall not use or be impaired by the use of marijuana, alcohol, controlled substances or illegal drugs at the workplace. Employees or volunteers who are prescribed marijuana or other controlled substances by a physician as part of a medical treatment plan may work unless impaired by their use.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF JANUARY, 2015.

Dale Bagley

Dale Bagley, Assembly President

ATTEST:

Johni Blankenship
Johni Blankenship, MMC, Borough Clerk



Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley
No: None
Absent: None

Introduced by: Wolf
Date: 01/20/15
Hearing: 02/24/15
Action: Introduced and Set for
Public Hearing on 02/24/15
Date:
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2015-02**

**AN ORDINANCE ENACTING KPB CHAPTER 10.14 PROHIBITING THE
OPERATION OF MARIJUANA CULTIVATION FACILITIES IN THE AREA OF THE
KENAI PENINSULA BOROUGH OUTSIDE OF THE CITIES, SUBJECT TO VOTER
APPROVAL**

WHEREAS, during the November 4, 2014, general election the voters approved the initiative in ballot measure no. 2 (initiative) which was an act to tax and regulate the production, sale and use of marijuana; and

WHEREAS, the initiative at AS 17.38.110(A) authorizes local governments to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores within their boundaries through the enactment of an ordinance or by a voter initiative; and

WHEREAS, residents of the borough should have the opportunity to vote on whether to have marijuana cultivation facilities for the intent of resale within the borough boundaries; and

WHEREAS, as the initiative grants all local governments including cities and boroughs the authority to regulate or prohibit the operation of marijuana cultivation facilities it is appropriate for the cities to decide for themselves whether to exercise this authority within their own boundaries; and

WHEREAS, as this would not apply within the incorporated cities only borough residents outside of the cities may vote on this question;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter to be numbered KPB 10.14 which shall read as follows:

CHAPTER 10.14 MARIJUANA CONTROL

10.14.010. Prohibition. The operation of marijuana cultivation facilities is prohibited in the area of the borough outside the cities.

10.14.020. Definitions. The terms used in this chapter have the same meaning as defined in AS 17.38.900 as now enacted or may be amended.

SECTION 2. That a proposition shall be placed before the voters of the Kenai Peninsula Borough for the regular election to be held on October 6, 2015, which reads as follows:

PROPOSITION No. _____

Shall Ordinance 2015-____, which establishes a new chapter in the Kenai Peninsula Borough Code of Ordinances entitled *Chapter 10.14 – Marijuana Control* prohibiting the operation of commercial marijuana cultivation facilities in the area of the Kenai Peninsula Borough outside of the cities be enacted?

Yes _____ A “yes” vote means marijuana cultivation facilities will be prohibited in the area of the borough outside of the cities.

No _____ A “no” vote means marijuana cultivation facilities will not be prohibited in the area of the borough outside of the cities.

SECTION 3. That Section 2 of this ordinance takes effect immediately upon its enactment. Section 1 of this ordinance shall take effect upon certification of the election approving the proposition.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2015.

Dale Bagley, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

By: Mayor DeVilbiss
Amended: 01/20/15
Adopted: 01/20/15

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 15-006**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY TO
REQUEST CLARIFICATION FROM THE STATE OF ALASKA ON BALLOT
MEASURE 2, THE LEGALIZATION OF MARIJUANA.

WHEREAS, in the primary election, registered Alaskan voters voted in favor of Ballot Measure 2, *An Act to tax and regulate the production, sale, and use of marijuana*; and

WHEREAS, some clarification is needed to properly evaluate the regulations to put in place; and

WHEREAS, clarification is needed regarding the powers granted to borough's and the cities within those boroughs; and

WHEREAS, clarification is needed on the "one-ounce" for personal and recreational use and if it will include the liquid concentrate; and

WHEREAS, international transport and shipping is illegal, the State must consider prohibiting non-Alaskan produced marijuana to curb the black market sales and support Alaskan agriculture and business; and

WHEREAS, it is not clear if the per person rules are for each adult over the age of 21, or if that the maximum limit is per household; and

WHEREAS, we also request to restrict certain packaging that is enticing to minors; and

WHEREAS, a large number of people were concerned about access to medicinal cannabis, there is currently no differentiation between recreational marijuana high in Tetrahydrocannabinol (THC), medicinal cannabis high in Cannabinoids (CBD), and Industrial hemp or the State should consider differentiation by both definition and distinct regulations; and

WHEREAS, there is currently no control of contaminants or potency in marijuana products, minimum standards need to be established and appropriate labeling required to include both THC and CBD levels; and

WHEREAS, please clarify by law whether a passenger vehicle is considered a non-public place and whether "public" for purposes of the prohibition on consumption of marijuana in "public" include things such as private baseball fields, smoking clubs or standing on the edge of your private property; and

WHEREAS, will there be an agricultural farm use tax exemption for locally produced marijuana; and

WHEREAS, it is suggested that a percentage of the marijuana initiative authorized taxation be put toward prevention, treatment, testing, enforcement, and security; and

WHEREAS, one possibility for the control of marijuana has been using the Alcohol Control Board we recommend, based on corroborating testimony, the State should set up a separate board for the regulation of marijuana; and

WHEREAS, unanswered questions have arisen pertaining to marijuana production, processing and sales outside municipalities in the unorganized borough and the State should address these issues; and

WHEREAS, other states have found infused edible products to be problematic and their regulation should be addressed very clearly in Alaska; and

WHEREAS, licensing for commercial production, processing, and sales should not disallow or limit the number of small (which needs to be defined) local, vertically integrated operations that are suitable for many other of Alaska's agricultural products; and

WHEREAS, the Alaska landlord/tenant act needs to be clear on what rights both the landlord and tenant have, with respect to personal marijuana use, production and the right to evict; and

WHEREAS, whether any public advertising for marijuana and related products should be prohibited; and

WHEREAS, the State should consider regulation of business hours; and


WHEREAS, the State should consider allowing permits for cultivation facilities three to four months before retail sales and consider how people would obtain seeds and original cuttings.

NOW, THEREFORE, BE IT RESOLVED, the Matanuska-Susitna Borough Assembly approves of this draft for legislative and regulatory issues.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day of January, 2015.


LARRY DEVILBISS, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk
(SEAL)

YES: Sykes, Beck, Arvin, Colligan, Mayfield

NO: Halter

By: Assemblymember Sykes
Amended: 01/20/15
Adopted: 01/20/15

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 15-007**

**A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY
ESTABLISHING A MARIJUANA ADVISORY COMMITTEE.**

WHEREAS, on November 4, 2014, Ballot Measure 2 was approved statewide by the voters; and

WHEREAS, Ballot Measure 2 generally legalizes marijuana and adopts a new chapter in the Alaska Statutes found at Alaska Statute 17.38; and

WHEREAS, Ballot Measure 2 provides the framework for legalization of marijuana but there are many laws and regulations that remain to be addressed by the state of Alaska; and

WHEREAS, Ballot Measure 2 also allows for the Borough to prohibit and/or implement regulations governing the number, time, place and manner of marijuana cultivation facilities, manufacturing facilities, retail stores and testing facilities; and

WHEREAS, there is uncertainty about what regulations or laws the state of Alaska may pass; and

WHEREAS, the Borough needs to consider possible comments to the State Legislature as well as the control committee regarding laws and regulations governing marijuana; and

WHEREAS, there are many issues and factors to be considered by the Borough in deciding all the local issues associated with the legalization of marijuana; and

WHEREAS, the Assembly is creating an advisory committee, known as the Marijuana Advisory Committee, to advise the Assembly and Administration on any and all aspects, impacts and concerns related to the legalization of marijuana; and

WHEREAS, it is the intent of this resolution that the scope of review by the advisory board include, but not be limited to, considering input from the public, research on aspects of marijuana legalization faced by other municipalities, such as land use, regulatory compliance, law enforcement, taxes and revenue, health, education, cultivation, transportation, testing, and retail sales, become aware of legislative developments and those of other Alaska municipalities and states where marijuana is legal, and offer advice and recommendations to the Assembly and administration on both the upsides and downsides of any issue related to or impacted by the legalization of marijuana deems necessary to consider; and

WHEREAS, the board has no authority to act on behalf of the Borough or communicate on the Borough's behalf other than to make recommendations to the Assembly and Administration.

NOW, THEREFORE, BE IT RESOLVED, the Assembly hereby establishes the Marijuana Advisory Committee to be provided

secretarial and staff support principally from the Clerk's department.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will advise the Assembly and Administration on any and all impacts of the legalization of marijuana and any issues to consider including, but not limited to, impacts on commerce, law, health, safety, education, planning, land use, and implementation of Alaska Statute 17.38.

BE IT FURTHER RESOLVED, that the Marijuana Advisory Committee shall include, but not be limited to, research on aspects of marijuana legalization faced by other municipalities, such as land use, regulatory compliance, law enforcement, taxes and revenue, health, education, cultivation, transportation, testing, and retail sales, become aware of Alaska legislative developments and those of other Alaska municipalities and states where marijuana is legal, and offer advice and recommendations to the Assembly and administration on both the upsides and downsides of any issue related to or impacted by the legalization of marijuana the board deems necessary to consider; and

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will advise and recommend how the Borough Assembly and/or Administration should comment to the state of Alaska regarding

the implementation of Alaska Statute 17.38, and report at least quarterly to the Assembly.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will advise and recommend how the Assembly and/or Administration should implement Alaska Statute 17.38 at the local level.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee may advise and recommend how the Assembly and/or Administration should act with regards to any issue or matter affected or impacted or related to marijuana and the implementation of Alaska Statute 17.38,


BE IT FURTHER RESOLVED, in order to gather input and consider all sides of all issues, the Marijuana Advisory Committee will be comprised of 17 members who, as feasible, shall be drawn from the following broad categories:

- One from a potentially interested marijuana grower
- One from non marijuana farming operation
- One from a potentially interested marijuana retailer
- One from financial community
- One from a local business organization, (i.e. Chamber of Commerce)
- One from law enforcement
- One from health community
- One from education community

- One from planning and zoning type experience
- One from sales/marketing advertising
- Three citizens of the Matanuska-Susitna Borough who do not live in city limits
- One member representing the city government of Houston
- One member representing the city government of Palmer
- One member representing the city government of Wasilla
- One member representing the Matanuska-Susitna Borough at the Department Director or equivalent level.

BE IT FURTHER RESOLVED, the Marijuana Advisory Committee will exist until June 30, 2018.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day of January, 2015.


 LARRY DEVILBISS, Borough Mayor

ATTEST:


 LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Sykes, Beck, Arvin, Colligan, Mayfield, and Halter

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Dept. of Law
For reading: January 13, 2015

**ANCHORAGE, ALASKA
AO No. 2015-7**

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE**
2 **MUNICIPAL CODE CHAPTER 8.35 WITH A NEW SECTION TO PROHIBIT THE**
3 **CONSUMPTION OF MARIJUANA IN A PUBLIC PLACE; AND AMENDING THE**
4 **MINOR OFFENSE FINE SCHEDULE AT AMC SECTION 8.05.025A.**
5 **ACCORDINGLY.**
6

7
8 **WHEREAS**, Ballot Measure 2 – An Act to Tax and Regulate the Production, Sale and
9 Use of Marijuana, and codified as Alaska Statutes 17.38, provides for the legalization
10 of marijuana, was passed by the voters in the recent state election and certified on
11 November 28, 2014 by the State of Alaska, Division of Elections; and
12

13 **WHEREAS**, newly enacted AS 17.38.040 states:
14

15 **Public consumption banned, penalty.**
16

17 It is unlawful to consume marijuana in public. A person who violates this
18 section is guilty of a violation punishable by a fine of up to \$100.
19

20 ; and
21

22 **WHEREAS**, the state statute does not define “public”; and
23

24 **WHEREAS**, the state statute does not discuss or mandate any enforcement
25 mechanism; and
26

27 **WHEREAS**, proponents of the effort to legalize marijuana referred to itself as the
28 “Campaign to Regulate Marijuana Like Alcohol”; and
29

30 **WHEREAS**, Anchorage Municipal Code section 8.35.400 bans the consumption of
31 alcohol in a public place; and
32

33 **WHEREAS**, the effective date of the state marijuana statute is February 24, 2015;
34 now, therefore,
35

36 **THE ANCHORAGE ASSEMBLY ORDAINS:**
37

38 **Section 1.** Anchorage Municipal Code chapter 8.35, Alcohol and Drug Offenses, is
39 hereby amended by adding a new section to read as follows:
40

41 **8.35.300 Consuming marijuana in a public place.**
42

- 1 A. It is unlawful for any person to knowingly consume marijuana when
 2 the person is:
 3
 4 1. On, in or upon any public place, except as permitted by
 5 ordinance, regulation, statute or permit; or
 6
 7 2. Outdoors on property adjacent to a public place, and without
 8 consent of the owner or person in control thereof.
 9
 10 B. For purposes of this section, the definitions of the words and phrases
 11 below shall apply:
 12
 13 1. *Consume* shall have the meaning, in all conjugate forms, of
 14 "consumption" set forth in AS 17.38.900.
 15
 16 2. *Marijuana* shall have the meaning set forth in AS 17.38.900.
 17
 18 3. *Public place* means a place to which the public or a
 19 substantial group of persons has access and includes, but is
 20 not limited to, streets, highways, sidewalks, alleys,
 21 transportation facilities, parking areas, convention centers,
 22 sports arenas, schools, places of business or amusement,
 23 shopping centers, malls, parks, playgrounds, prisons, and
 24 hallways, lobbies, doorways and other portions of apartment
 25 houses and hotels not constituting rooms or apartments
 26 designed for actual residence.
 27
 28 C. Violation of this section is a minor offense punishable as set forth in
 29 the minor offenses fine schedule.
 30
 31

32 **Section 2.** Anchorage Municipal Code section 8.05.025 is hereby amended to read
 33 as follows (*the remainder of the section omitted is not affected and therefore not set*
 34 *out*):
 35

36 **8.05.025 Minor Offense Fine Schedule; Misdemeanor penalty**
 37 **reference table; and state surcharge.**
 38

- 39 A. *Minor Offense Fine Schedule.* In accordance with AS 29.25.070(a),
 40 citations for the following offenses may be disposed of as provided in
 41 AS 12.25.195-.230, without a court appearance, upon payment of the
 42 fine amounts listed below plus the state surcharge required by AS
 43 12.55.039 and AS 29.25.074, if applicable. The Rules of Minor Offense
 44 Procedure in the Alaska Rules of Court apply to all offenses listed
 45 below. Citations charging these offenses must meet the requirements
 46 of Minor Offense Rule 3. If a person charged with one of these
 47 offenses appears in court and is found guilty, the penalty imposed for
 48 the offense may not exceed the fine amount for that offense listed
 49 below. Reduction of the scheduled fine amount is prohibited pursuant
 50 to Alaska Rules of Minor Offense Procedure 10(a). If an offense is not

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listed on this fine schedule or another fine schedule, the defendant must appear in court to answer to the charges. A person must respond to the citation within 30 days. Reduction of the scheduled fine amount is prohibited pursuant to Alaska Rules of Minor Offense Procedure 10(a).

Title	Section	Fine amount
Impersonating paramedic or emergency medical technician	8.30.075	300.00
<u>Consuming marijuana in public place</u>	<u>8.35.300</u>	<u>100.00</u>
Consuming alcoholic beverage in public place.	8.35. <u>400</u> [300]	100.00
Intoxicated persons on roadway	8.35. <u>410</u> [310]	500.00
*** **	*** **	*** **

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B. Misdemeanor offenses reference table.

*** ** (AO No. 2014-42, § 1, 6-21-14)

Section 3. This ordinance shall be effective on February 24, 2015.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2015.

Chair of the Assembly

ATTEST:

Municipal Clerk

30

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2015-7

Title: **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 8.35 WITH A NEW SECTION TO PROHIBIT THE CONSUMPTION OF MARIJUANA IN A PUBLIC PLACE; AND AMENDING THE MINOR OFFENSE FINE SCHEDULE AT AMC SECTION 8.05.025A. ACCORDINGLY.**

Sponsor: **MAYOR**
 Preparing Agency: Department of Law
 Others Impacted: APD

CHANGES IN EXPENDITURES AND REVENUES:		(In Thousands of Dollars)				
	FY15	FY16	FY17	FY18	FY19	
Operating Expenditures						
1000 Personal Services						
2000 Non-Labor						
3900 Contributions						
4000 Debt Service						
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -	
Add: 6000 Charges from Others						
Less: 7000 Charges to Others						
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -	
REVENUES:						
CAPITAL:						
POSITIONS: FT/PT and Temp						

PUBLIC SECTOR ECONOMIC EFFECTS:

The economic effects are speculative and cannot be reasonably estimated because of the changing status of marijuana laws and its use. There is no basis on which to realistically estimate the revenue from this new minor offense fine.

PRIVATE SECTOR ECONOMIC EFFECTS:

None.

Prepared by: Department of Law

Telephone: 343-4545

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

BALLOT LANGUAGE

**Ballot Measure No. 2 – 13PSUM
An Act to Tax and Regulate the Production, Sale,
and Use of Marijuana**

This bill would tax and regulate the production, sale, and use of marijuana in Alaska.

The bill would make the use of marijuana legal for persons 21 years of age or older. The bill would allow a person to possess, use, show, buy, transport, or grow set amounts of marijuana, with the growing subject to certain restrictions. The bill would ban the public use of marijuana. The bill would prohibit a person under 21 years of age from using false identification to buy or try to buy marijuana or marijuana accessories.

The bill would allow validly registered marijuana-related entities and persons 21 years of age or older who own or are employed by these entities to make, possess, buy, distribute, sell, show, store, transport, deliver, transfer, receive, harvest, process, or package marijuana and marijuana products, subject to certain restrictions. Alaska Statute 17.30.020 (Controlled Substances) would not apply to these entities.

The bill would require the Alcoholic Beverage Control (ABC) Board to implement parts of the bill. But the bill would also let the legislature create a Marijuana Control Board to assume these duties. The bill would require the ABC Board to adopt regulations governing marijuana-related entities. The regulations would need to cover certain topics and be subject to certain restrictions. The bill would also create procedures for registering a marijuana-related entity. The procedures would be managed by the ABC board and local governments.

The bill would allow a local government to prohibit the operation of marijuana-related entities. A local government could do that by enacting an ordinance or through voter initiative. The ordinances could cover the time, place, manner, and registration of a marijuana entity's operations.

The bill would allow a person 21 years of age or older to possess, use, show, buy, or transport marijuana accessories. Marijuana accessories are products individuals use to grow or consume marijuana. The bill would also allow persons 21 years of age or older to make marijuana accessories and to distribute or sell them to persons who are 21 years of age or older.

The bill states that it is not intended to require an employer to allow marijuana use, transportation, possession, sale, growth, or transfer, or prevent an employer from prohibiting these activities. The bill does not intend to supersede laws prohibiting driving under the influence of marijuana. The bill does not intend to prohibit schools, correction facilities, hospitals, or private persons or entities from restricting marijuana on their property. The bill does not intend to limit the state's existing medical marijuana laws.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

The bill would impose a \$50 per ounce (or proportionate) excise tax on the sale or transfer of marijuana from a cultivation facility to a retail store or marijuana product manufacturing facility. The marijuana cultivation facility would pay the tax and send monthly tax statements to the Department of Revenue. The Department of Revenue could exempt certain parts of the marijuana plant from the tax. It could also establish a lower tax rate for certain parts of the plant.

The bill defines numerous terms. The bill contains a statement of purpose and findings. The bill would impose civil fines and penalties for violations.

Should this initiative become law?

Yes No

LEGISLATIVE AFFAIRS AGENCY SUMMARY

The Act regulates the production, sale, and use of marijuana. The Act enacts a marijuana tax.

The Act allows personal use of marijuana by a person 21 years of age or older, with restrictions. The Act lets a person have, show, use, buy, transport, or give away up to one ounce of marijuana to another person 21 years of age or older. The Act makes it a crime for a person under 21 to use a false ID to buy marijuana. The Act also makes it a crime to use marijuana in public. The Act sets the number and types of marijuana plants a person may keep and give away. The plants may not be in public view. The Act allows a person 21 years of age or older to buy, make, have, show, sell, and give away items used to grow, use, produce, package, or store marijuana, or produce, use, package, test, or store marijuana products.

The Act regulates marijuana establishments. The Act defines an establishment as a retail store, a grower, a tester, or a product manufacturing facility. To operate legally, an establishment must register. Registered establishments may possess, transport, deliver, display, or receive marijuana. Registered marijuana stores, growers, or manufacturers may buy and sell marijuana. Growers or testers may grow or process it.

The Alcoholic Beverage Control Board administers the registration system. The board must make rules to carry out the Act. Those rules may not make it impractical to operate a marijuana establishment. The board must give a copy of each application and half the application fee to the local marijuana authority, if there is one; the Act provides for local control if the board does not act. Cities or boroughs may ban establishments. They may limit the number of them within their boundaries. They may regulate the time, place, and manner of operation. They may name local authorities to regulate them.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

The Act taxes the sale of marijuana by registered growers. The tax is \$50 per ounce. The Department of Revenue administers the tax. Growers who pay late may be subject to fines. Growers who do not pay the tax may lose their registrations.

Under the Act, employers do not have to allow marijuana in the work place. Employers may also restrict marijuana use by employees. The Act does not allow a person to drive under the influence of marijuana. The Act allows private property owners or tenants to ban the use of marijuana on the property.

STATEMENT OF COSTS

Estimate of Costs to the State of Alaska for the Implementation of the Initiative Proposing an Act to "tax and regulate the production, sale, and use of marijuana."

Summary

As required by AS 15.45.090(a)(4), the State of Alaska has prepared the following statement of costs resulting from the implementation of the proposed ballot initiative to tax and regulate the production, sale, and use of marijuana.

The initiative would legalize the personal use of marijuana for persons age 21 or older. Specifically, the statute would permit: the possession, use, display, purchase, or transportation of marijuana accessories or one ounce or less of marijuana; the possession, growth, processing, or transporting of no more than six marijuana plants (with three or fewer being mature, flowering plants) and possession of the marijuana on the premises where the plants were grown; the transfer of 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; the consumption of marijuana in a non-public location; and assisting another person who is 21 years of age or older in any of the above activities.

The initiative would also impose certain restrictions and penalties on the personal cultivation and public consumption of marijuana as well as prohibit the use of false identification by a person under the age of 21 to purchase or attempt to purchase marijuana. It would allow for the manufacture, possession, purchase, distribution and sale of marijuana accessories as well as the lawful operation of marijuana-related facilities such as retail stores and cultivation facilities.

The initiative requires the Alcoholic Beverage Control Board (ABC) in the Department of Commerce, Community and Economic Development (DCCED) to adopt regulations to implement the law no later than nine months after the initiative is approved. However the legislature may create a Marijuana Control Board in DCCED to assume the ABC's regulatory role. Marijuana establishments must be registered and local governments could prohibit or limit the existence of and operations of marijuana facilities in their jurisdiction.

The initiative also imposes a \$50 per ounce (or proportionate part) excise tax on the sale and transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. The tax would be paid by the marijuana cultivation facility.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

Based on examination of Washington and Colorado, two states that are currently in the process of implementing similar legislation, the Governor, the Legislature, or the ABC Board may choose to establish a Task Force to represent the major stakeholders affected by the implementation of the initiative. An estimate of the potential costs for the Task Force are included under the DCCED cost statement beginning on page 3. This would be an effective method to facilitate an expedient and comprehensive gear-up of the tax and regulatory framework described or established in the initiative.

There are numerous unknowns in the State's implementation of this initiative and as such the cost statement provided here is illustrative. For example, it is unknown whether or not the legislature will create a Marijuana Control Board within DCCED, so the cost estimates do not reflect that potential administrative structure. Using information available from the Colorado and Washington experiences as well as other sources, state agencies have identified a range of potential costs to the state from \$3.7 to \$7.0 million in the first year. It is likely that costs related to development of the tax and regulatory framework would initially be significant. Over the longer term, it would be expected that more of the state's total costs would become public health and education activities as the extent of the impact on public health becomes more defined.

Below is a summary table of agency costs followed by explanations of the estimates by individual agency. The following represents a potential range of state agency costs. The estimate does not include expenses that the legislature may or may not incur associated with the initiative, or any legal expenses that the state may incur as a result of the initiative.

Summary of estimated costs to implement the Marijuana Initiative by State Agency

Agency	Cost Range - First Year	
Alaska Department of Revenue	\$650,000	\$800,000
Alaska Department of Commerce, Community and Economic Development	\$1,563,960	\$1,563,960
Alaska Department of Health and Social Services	\$0	\$2,987,000
Alaska Department of Public Safety	\$1,434,700	\$1,434,700
Alaska Department of Environmental Conservation	\$0	\$136,900
University of Alaska	indeterminate	--
Office of the Lieutenant Governor	\$9,000	\$9,000
Division of Elections	\$71,257	\$71,257
Total First Year Estimated Cost	\$3,728,917	\$7,002,817

Statement of Cost Estimates by Department

Estimate of costs to the Alaska Department of Revenue to implement the marijuana initiative

\$650,000 - \$800,000

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

If this initiative is approved by the voters in the August 2014 primary election, it would require DOR to incur additional costs to effectively implement it. If approved, it is presumed that this initiative would take effect thirty days after approval by a majority of qualified voters.

The estimated cost to the state for the implementation of this initiative is between \$650,000 and \$800,000. Recurring annual costs are estimated at approximately \$300,000.

The estimated costs can be broken down into two categories:

Personnel Services:	\$300,000
<u>Contractual Services:</u>	<u>\$350,000-\$500,000</u>
TOTAL	\$650,000-\$800,000

Personnel - DOR estimates that it will need to create at least three new positions to oversee the new excise tax imposed by this initiative at a cost of approximately \$300,000 to assist with the administration and collection of a new excise tax. DOR would need at least one Tax Auditor III position, one Tax Technician II position, and one Investigator III position to fulfill the needs of a new tax program. This cost is similar to the cost that is currently incurred by DOR to administer other similar types of excise taxes, and would be recurring annual costs for DOR.

Contractual Services - DOR estimates that it will incur a one-time additional expense of approximately \$500,000 for systems configuration. In August 2014, DOR will be complete with configuring the excise tax portion of its new Tax Revenue Management System (TRMS). If this initiative is approved by the voters, it will require DOR and its information system contractors to reconfigure the system to add this new excise tax. Given the limited timeframe to analyze what portions of the system would need to be reconfigured if the initiative passed, DOR's contractors have supplied an estimate of \$350,000 to \$500,000 for this effort.

The above cost estimates represent a minimum cost given the numerous uncertainties around the referendum, and what all of the effects of its passage would be.

Estimate of costs to the Alaska Department of Commerce, Community and Economic Development to implement the marijuana initiative **\$1,563,960**

The following represents an estimated cost to DCCED given the language of the ballot initiative; the actual costs will likely be different. The estimate does not include expenses the legislature or other departments may incur associated with the initiative. The Washington and Colorado marijuana initiative cost estimates were reviewed in developing this cost analysis.

If the initiative is approved by voters in the August 2014 primary election, the State of Alaska, through the Alcoholic Beverage Control (ABC) Board, shall adopt regulations within nine months following the effective date, as required by AS 17.38.090. It is presumed that the initiative would take effect thirty days after the approval by a majority of qualified voters.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

A local government may designate a local regulatory authority that would be responsible for processing applications submitted for the operation of a marijuana establishment within the boundaries of the local government. If the ABC Board fails to adopt regulations as outlined in the initiative, an applicant may submit an application directly to a local regulatory authority one year after the effective date of the law. In accord with AS 17.38.110, a local government may prohibit cultivating, manufacturing, testing, and selling marijuana through an ordinance or voter initiative. Local governments may also enact local ordinances or regulations for the governance of marijuana establishment operations as long as they are not in conflict with the initiative or regulations enacted pursuant to the initiative.

If the initiative passes, the responsibility for controlling marijuana will lie with the ABC Board until or unless a marijuana control board is established by the legislature within DCCED.

As was done in the state of Colorado following the passage of a similar initiative, the department recommends the creation of a Task Force to identify legal, policy, and procedural issues that need to be resolved, and to offer suggestions and proposals for legislative and executive action for the implementation of this initiative. The Task Force would need to complete its initial regulatory framework within four months of the effective date of the initiative to allow for the adoption of regulations within the nine month requirement. The remaining Task Force work would be concluded one year after the effective date of the initiative.

It is assumed that the Task Force would be comprised of a total of 17 uncompensated members representing interest groups affected by the ballot initiative: four Legislators, one each from the majority and minority of both the House and Senate; one Commissioner or their Designee from each agency affected by this initiative (DCCED, Public Safety, Health and Social Services, Environmental Conservation, Revenue, Law, Corrections and the University of Alaska); one member of the initiative campaign; one member of the public who represents the medical industry; and three members of the public at-large, with one representing rural Alaska. Task Force members will receive travel and per diem. The actual composition of the Task Force may be different. The estimated total cost to DCCED for the implementation of this initiative is \$1,563,960 for the first year and \$1,413,140 for the second year.

	<u>First Year</u>	<u>Second Year</u>
Business Registration Examiners, Range 13 C - 2 at \$73,000 each		\$146,000
Investigator IIIs, Range 18 C - 4 at \$99,300 each		\$397,200
Investigator IV, Range 20 C		\$110,000
Administrative Officer I, Range 17 C		\$86,000
<u>Program Coordinator II, Range 20 C</u>	<u>\$107,800</u>	<u>\$107,800</u>
Total Personal Service Costs	\$107,800	\$847,000
Board member/Staff travel and per diem		\$85,900
Informants/underage buyers (compliance check) travel, pay, and per diem		\$34,000
<u>Task Force travel and per diem</u>	<u>\$16,600</u>	
Total Travel and Per Diem Costs	\$16,600	\$119,900

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

ABC Board Warning/Enforcement Signs	\$2,000	\$2,000
Envelopes	\$800	\$800
Forms	\$1,500	\$1,500
Postage	\$2,000	\$2,000
Office Space 160 sq. ft. per employee at \$3 foot	\$5,760	\$51,840
Ongoing support services for new employees	\$10,000	\$90,000
<u>One-time set up costs for new positions</u>	<u>\$5,000</u>	<u>\$40,000</u>
Total Equipment, Office Space, and Supplies Costs	\$27,060	\$188,140
Task Force recommendations contract funds	\$650,000	
Department of Law Assistant Attorney General Services	\$62,500	\$62,500
Department of Law for expedited regulations	\$200,000	
Database Creation	\$500,000	
Database Maintenance		\$50,000
Vehicles 4 at \$33,500		\$134,000
<u>Vehicle Operating and Maintenance at \$2401 per month</u>		<u>\$11,600</u>
Total Contracts and Services Costs:	\$1,412,500	\$258,100
Total Costs:	\$1,563,960	\$1,413,140

Personal Services

All positions within the ABC Board are currently performing at or above capacity. With the passage of the initiative, the workload of the ABC Board has the potential to double or triple. If doubled, the ABC Board would require an additional four investigators, one supervisor, and two business registration examiners to regulate the marijuana industry, similar to the duties of current staff that regulate the liquor industry. The addition of an Administrative Officer I would be necessary to support the added financial requirements. A Program Coordinator II would be necessary for the facilitation, coordination, and documentation of the Task Force and for the long-term program development, planning, coordination, and oversight of this complex program.

Travel and Per Diem

Board

If the ABC Board of Directors takes on the added responsibility of controlling the cultivation, manufacture, barter, possession, and the sale of marijuana, the current board meetings would be extended by one day, adding to the cost of lodging, ground transportation, and per diem.

Investigations

Investigators and underage buyers will travel to communities around the state to provide compliance checks and ensure retailers adhere to the laws and regulations of the program, similar to liquor industry compliance investigations.

Task Force

The Task Force will hold seven two-day meetings, with two face-to-face meetings in Anchorage and the rest conducted either by video or teleconference; this assumes ten members are located

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana outside Anchorage.

Equipment, Office Space, and Supplies

Equipment and supply costs includes new employee set up, warning signs, test kits, paper products, postage, and additional office space.

Contracts and Services

Contract costs are for studies on market demand, effects of marijuana, and the cost of production. Regulations will need to be in place nine months after the effective date of this initiative and will require extensive work with the Department of Law. There will be significant ongoing work required by the Department of Law to meet the demands of this new program, similar to the legal demands of the liquor industry.

A new database would require the analysis and development of business rules, analysis of existing systems for parallel processes or required modifications, new system development, testing, validation, implementation, and documentation.

Vehicles

Additional vehicles are required to perform investigations across the state.

Estimate of costs to the Alaska Department of Health & Social Services to implement the marijuana initiative **\$0 - \$2,987,000**

As written, the initiative primarily focuses on the process and procedures necessary to establish taxation and regulation of the production, sale, and use of marijuana; the actions addressed in the initiative will not directly impact or cost the Department of Health and Social Services in the establishment of these procedures and regulation development.

However, there is evidence that downstream health and social service consequences of implementing this initiative could be significant. The department has prepared an estimate based on research, other states' experiences, and an extrapolation of expenses the department incurs providing similar substance related services. The fiscal impact will directly relate to how many additional people begin using marijuana and how many current users increase their use.

To evaluate costs, the department has considered recent studies including Proceedings of the National Academy of Science¹, and the United Nations Office on Drugs and Crime, *Cannabis: A Short Review*.²

These studies note emerging findings on the harmful effect of cannabis on neuropsychological functioning data indicating cannabis is linked to addiction, cognitive impairment, motor skills

¹ Persistent cannabis users show neuropsychological decline from childhood to midlife. Meier, Madeline H., Caspi, Avshalom, et al. Proceedings of the National Academy of Science. Published online August 27, 2012

² Cannabis: A Short Review, Discussion Paper from the United Nations Office on Drugs and Crime. 2012.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

deficiency, respiratory, cardiovascular and mental health problems, and has been shown to be particularly damaging to maturing brains.

The consequences and outcomes of marijuana use create a significant potential for increased costs for physical and behavioral health care, child welfare services, educational systems, employers, public safety, criminal justice, community health and other aspects of state and local governments. For instance, legalization of marijuana may create an environment in which young people, in particular, perceive a lower risk of harm from marijuana use, resulting in increased use.³

According to Robert Morrison, Executive Director of the National Association of State Alcohol and Drug Abuse Directors (NASADA), Alaska has one of the highest use rates of marijuana at 11%, along with Vermont. He also highlights that an estimated 4.4 million individuals, nationwide, met criteria for marijuana dependence or abuse.⁴

While actual increases in health and social service programming are unknown, research and data provide a clear picture of the potential for increased problems associated with the legalization of marijuana.⁵ In states where medical marijuana is legal, marijuana abuse and dependence rates are almost twice as high as in those states without medical marijuana. Two states that have recently legalized marijuana, Washington and Colorado, report difficulty determining the potential costs. Results of a recent report to estimate the fiscal impact of marijuana legalization in Colorado were inconclusive and four national marijuana-policy experts wrote that "the future holds more unknowns than knowns."

The Division of Juvenile Justice has identified several areas in which costs could increase. Making possession of marijuana an offense that can be committed by minors but not adults creates a new status offense that is subject to specific rules governing the secure holding of juveniles. Violation of those rules could jeopardize federal funding currently received through the U.S. Office of Juvenile Justice and Delinquency Prevention. The initiative could also require increased treatment for substance abuse and mental health issues among youth held in detention.

With this very brief overview of concerns about increased marijuana use and legalization, the department anticipates potential costs to DHSS in the following areas, with estimates of per annual cost increases:

- Increased substance use, dependency and addictions treatment: \$200,000 or a 10% increase in treatment services for marijuana dependence;
- Increased mental health treatment services: \$1.1 million or a 5% increase in mental health treatment services;
- Increased physical health services through public health and our primary care providers: \$400,000;

³ Trends in Adolescent Substance Use and Perception of Risk from Substance Use. The NSDUH Report; from the Substance Abuse and Mental Health Services Administration (SAMHSA) and the National Survey on Drug Use and Health. January 3, 2013.

⁴ Marijuana Regulation: Considerations from State Substance Abuse Agency Directors. A presentation to the National Conference of State Legislatures (NCSL), Spring Forum. Robert Morrison, Executive Director, NASADAD. May 3, 2013.

⁵ Toolkit for States Facing "Medical" Marijuana & Marijuana Legalization Initiatives. Community Anti-Drug Coalitions of America (CADCA). Summer 2012.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

- Increased Medicaid costs to cover treatment and service needs: \$27,000 or a 10% increase in current marijuana treatment services covered by Medicaid;
- Increased enforcement of marijuana access by youth (similar to our current tobacco enforcement efforts). This expenditure will be determined upon the process developed for retail sale of marijuana: \$140,000 or a potential 20% increase;
- Increased prevention, education and early intervention programs for adolescents and young adults: 10% community grant increase and 20% ASAP service increase = \$390,000 + \$250,000;
- Increased child protection services for young children in homes with regular and persistent marijuana users (second hand marijuana smoke, neglect), and training for foster parents and staff: \$250,000;
- Increased juvenile justice services for youth engaged in marijuana use and dependency \$200,000; and
- Potential Human Resource activities related to employee use of marijuana and related policies \$30,000.

Estimated annual potential cost increases to the Department of Health and Social Services resulting from the legalization of marijuana are \$2,987,000. As indicated, these are estimates based on projected impacts; depending on the actual regulations, enforcement, and number of citizens who increase their use of marijuana, actual costs are likely to be different.

**Estimate of Costs to the Alaska Department of Public Safety
to implement the marijuana initiative** **\$1,434,700**

The ballot initiative would tax and regulate marijuana sales and allow Alaskans to cultivate marijuana for personal use. Persons 21 years of age or older could legally possess up to one ounce of marijuana or six marijuana plants (three of which could be mature), and could legally cultivate, sell and purchase marijuana through authorized marijuana-related facilities.

The cost to DPS to implement the law proposed by this initiative is based on the following assumptions regarding the legalization of marijuana in Alaska: it will lead to increased demand and usage and a consequent increase in the number of people driving while under the influence of this drug, and it will increase the illegal diversion and exportation of marijuana lawfully cultivated in Alaska.

Therefore, the costs to DPS are associated with the following:

1. Increasing the number Statewide Drug Enforcement Unit trooper investigators to target the diversion and exportation of marijuana lawfully grown in Alaska;
2. Requiring more troopers to receive Drug Recognition Expert (DRE) certification to enhance their ability to detect drivers impaired by marijuana and address the anticipated increase in DUI offenses;
3. Launching a public education and awareness campaign on the dangers of driving under the influence of marijuana; and

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

4. Increasing the number of samples being sent out for toxicology analysis to detect the presence of marijuana in blood.

Division of Alaska State Troopers:

Marijuana is identified as a primary substance of abuse in Alaska, along with alcohol, cocaine, heroin, and prescription drugs. These substances are the focus of most drug enforcement efforts in Alaska.

DPS' Division of Alaska State Troopers (AST), Alaska Bureau of Investigation, Statewide Drug Enforcement Unit (SDEU) provides a leadership role in coordinating law enforcement's efforts to reduce the availability of illegal alcohol and controlled substances (including marijuana) throughout Alaska. The SDEU primarily supports six investigative drug task forces throughout Alaska. These teams are broken down by region as follows:

- Alaska Interdiction Task Force/Anchorage Enforcement Group (sponsored by the U.S. Drug Enforcement Administration)
- Fairbanks Area-wide Narcotics Team
- Mat-Su Narcotics Enforcement Team
- South Central Area-wide Narcotics Team
- Southeast Alaska Cities Against Drugs Task Force
- Western Alaska Alcohol and Narcotics Team

SDEU participates with and receives assistance from several federal investigative agencies involved in drug enforcement. These agencies include: the Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); U.S. Postal Inspection Service; Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE); and U.S. Immigration and Customs Enforcement (ICE).

The DEA awarded \$80,000 in Marijuana Eradication grant funds to the State of Alaska in calendar year 2012. These funds were used to cover some of the costs associated with marijuana eradication in the state. In calendar year 2012, funds were shared with the Anchorage, Craig, and Kenai police departments to cover overtime incurred by officers involved in eradication operations. The following table reports the activities supported through this grant:

Total Eradicated Outdoor Grow Sites	Total Cultivated Plants Outdoor	Total Eradicated Indoor Grow Sites	Total Cultivated Plants Indoor	Total Cultivated Plants (Outdoor & Indoor)	Bulk Processes Marijuana	Number of Arrest	*Assets Seized (Value)	Weapon Seizure
3	113	62	4,270	4,383	203	76	\$36,077	74

**Assets seized include paraphernalia items such as grow lights and digital scales and does not include marijuana plants.*

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

Given that marijuana is illegal under federal law, legalization of marijuana in Alaska will have an impact on the collaborative working relationships DPS has with its federal counterparts and could potentially affect federal grant funds DPS and local law enforcement agencies receive for marijuana eradication and suppression efforts.

Should this initiative become law, it is practical to assume that arrests for simple possession will decrease. Even so, drug enforcement efforts are primarily targeted at individuals engaged in commercially cultivating and trafficking marijuana.

It is likely that sales of marijuana will not only be conducted by legitimate, taxpaying business people, but by criminal actors as well. Due to more potent levels of tetrahydrocannabinol (THC) in Alaskan-grown marijuana, the out of state demand for the drug is significant, and legalization could increase opportunities for marijuana export. AST predicts illegal commercial marijuana growing operations will continue to exist to meet this demand, skirting taxes and regulation in order to make the maximum profit. In addition, allowing the operation of marijuana cultivation facilities as proposed by the initiative actually increases the opportunity for Alaska's "legally grown" marijuana to be illegally diverted and exported.

DPS would require at least three additional Alaska State Trooper positions to target the illegal diversion and exportation of marijuana lawfully cultivated in Alaska. These positions would also work with DCCED's Alcoholic Beverage Control (ABC) board investigators on investigations into criminal activity associated with regulation of the marijuana industry.

The first year cost of three new trooper investigator positions is \$827,200; \$594,400 for ongoing funding to cover personal services, travel, training, and supplies (base increment), and \$232,800 to cover training at the academy, IT equipment, portable radios, office equipment, firearms and vehicles (one-time funding).

Though arrests for simple possession may decrease, the greater availability of marijuana will likely increase the number of adults consuming marijuana and the frequency with which it is consumed; consequently, the number of individuals driving under the influence of marijuana is expected to increase. Current practice is to administer standardized field sobriety tests to individuals suspected of driving under the influence (DUI). There is currently no chemical test that can be used in the field to detect marijuana impairment; the taking of a blood sample for purposes of determining the presence of a controlled substance (including marijuana) must be conducted at a medical facility.

To quickly and proficiently recognize the signs of marijuana impairment in drivers who are contacted, DPS proposes that more troopers become certified as drug recognition experts. A drug recognition expert (DRE), sometimes referred to as a drug recognition evaluator, is a police officer trained to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol. Training and certification requirements are established by the International Association of Chiefs of Police and the National Highway Traffic Safety Administration. The cost for this training is approximately \$2,500 per trooper.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

Finally, DPS would launch a major public education and awareness media campaign focused on the dangers of driving under the influence of marijuana, similar to its current drunk driving and seat belt use campaigns. Using current media campaign expenditures as a base, the production and advertising costs for a DUI campaign focused on marijuana impairment are estimated to be \$500,000 per year for television, radio, print, and internet advertising.

Scientific Crime Detection Laboratory:

The DPS Scientific Crime Detection Laboratory (SCDL) provides drug identification services to Alaska's law enforcement agencies through its controlled substances section. Forensic scientists in the section analyze evidence items and conclusively identify a controlled substance or perform sufficient analysis to determine that no controlled substances are present.

Drug evidence submitted to the section can be analyzed through a variety of methods that include preliminary testing combined with confirmatory testing. Preliminary testing can include color testing, microcrystalline microscopic analysis, or physical identification of a tablet using a reliable source. The confirmation of the presence of a controlled substance is performed through one of two confirmatory tests, gas chromatography/mass spectrometry (GC/MS) or infrared spectrophotometry.

Following analysis, a forensic scientist interprets the instrumental data and prepares a report of his/her findings. This report is used in criminal court proceedings and often the forensic scientist is asked to provide expert testimony to the courts.

Marijuana, a schedule VIA controlled substance under AS 11.71.190, is commonly submitted by law enforcement agencies to the crime lab. Drug paraphernalia such as pipes and digital scales are also frequently submitted to the crime lab for analysis. Forensic scientists may also be called upon to analyze samples for federal agencies operating within Alaska for substances controlled under the federal Controlled Substances Act, which includes marijuana.

The crime lab seldom analyzes personal use quantities of marijuana. Rather, the evidence being submitted to the crime lab is indicative of distribution (trafficking) level quantities. As AST predicts that illegal commercial marijuana grow operations will continue despite any legalization of marijuana-related facilities, such as marijuana cultivation facilities and marijuana retail stores, the SCDL does not anticipate a decrease in submissions of evidence.

Alaska does not currently have an in-house drug toxicology program. The SCDL has a contract with the Washington State Patrol Toxicology Laboratory in Seattle for toxicology services and sends samples there for drug analysis. Based on the anticipated increase in marijuana impaired driving, DPS estimates that an average of 150 additional samples will be sent out for analysis each year. At an average cost of \$300 per sample, the increase in contract costs would be \$45,000 per year.

The estimated total cost to DPS for the implementation of this initiative is \$1,434,700 for the first year and \$1,201,900 for the second year. Following is a summary of the estimated costs:

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

	First Year	Second Year
Three Trooper Investigator Positions	\$594,400	\$594,400
One-time position costs (academy training, IT equipment, office equipment, firearms, and vehicles)	\$232,800	\$0.0
Total Personal Service Costs	\$827,200	\$594,400
Marijuana DUI Media Campaign (production and advertising)	\$500,000	\$500,000
DRE Certification (\$2,500/trooper x 25 troopers annually)	\$82,500	\$82,500
Contractual increase for toxicology services (\$300/sample x 150 additional samples)	\$45,000	\$45,000
Total Contracts and Services Costs	\$607,500	\$607,500
TOTAL COSTS	\$1,434,700	\$1,201,900

Estimate of costs to the Alaska Department of Environmental Conservation to implement the marijuana initiative **\$0 - \$136,900**

The ballot initiative legalizes marijuana for use by persons 21 years of age and older. Section 17.38.080 states that the Department of Commerce, Community, and Economic Development (DCCED) may create a Marijuana Control Board; otherwise, the powers, duties, and responsibilities fall to the Alcoholic Beverage Control Board, located in the DCCED.

Normally, under AS 17.20, the DEC has responsibility to regulate food and food products. Marijuana or its derivatives, if considered a food, would fall under those provisions. However, under 17.38.090 of the proposed law, responsibility for regulating marijuana, including creating labeling requirements and health and safety regulations for the manufacture of marijuana, lies with the Alcoholic Beverage Control Board.

If additional food establishments were opened to create marijuana products (such as marijuana bakeries, etc.) along with additional food facilities opening up in the state, the Food Safety and Sanitation Program within DEC will need an additional Environmental Health Officer III position in Anchorage to review sanitation plans and conduct sanitation inspections for the increased number of facilities. If there is an increase in facilities, DEC anticipates needing one full time position at a total cost of \$136,900 (includes personal services, travel, contractual and supply expenses).

The estimates are done based on the cost during FY14 and do not reflect inflationary increases that will occur during the years it takes for this legislation to be passed, regulations to be written, and individuals to set up grow operations and potential food establishments. The cost will likely increase in future years.

Estimate of costs to the University of Alaska to implement the marijuana initiative **Indeterminate**

The University of Alaska has examined the initiative and due to the uncertainty around the

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

initiative cannot provide a definitive estimate of the costs that it would incur at this time. However, should the initiative become law, it will directly impact the University's primary population – its students.

Areas of potential costs include but are not limited to:

As with Colorado and Washington, education will be needed for students, faculty, and staff about how the initiative would change University policies regarding possession or use of drugs on campus.

The Clery Act includes requirements for education on drug effects. The University would need to adjust its Clery documents, and there would potentially be some production costs associated with that effort. Additionally, there will likely be costs associated with revising University policies and regulations such as housing, employment and discipline.

It is anticipated that there would be additional costs associated with enforcement (the proposed law prohibits consumption in public) by UAA and UAF police departments as well as by administrators

There are potential legal costs associated with analyzing initiative and advising Major Administrative Units (MAUs).

There is likely to be some impact on the health care costs and rates for employees as well as a potential impact on insurance rates for the University.

The University envisions that they would very likely incur some research costs based on requests for information on the social and economic impacts of the initiative.

Estimate of costs to the Office of the Lieutenant Governor and the Division of Elections to implement the marijuana initiative \$80,257

Office of the Lieutenant Governor

Assuming the initiative is placed on the ballot, the minimum cost to conduct public hearings concerning the initiative in two communities in each of four judicial districts is estimated to be \$9,000. This number may be reduced if hearings are held on more than one initiative at a time.

Lt. Governor's Office estimate by category

<u>Travel</u>	\$ 9,000
Total	\$ 9,000

Estimated travel expenses include round-trip air transportation, per diem and other associated travel costs for the Lieutenant Governor and staff to travel to seven communities in Alaska. It is assumed one of the hearings would be in Anchorage which would not involve travel costs.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

Division of Elections

The minimum cost to the Division of Elections associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition, is estimated to be \$71,257.

Elections estimate by category

Personal Services	\$69,957
<u>Services</u>	<u>\$ 1,300</u>
Total	\$71,257

Personal services expenses associated with certification of the initiative application and review of the initiative petition:

Three full-time employees at 522 hours is \$29,200

8 temporary employees at 2,520 hours is \$40,757

Services expenses associated with certification of the initiative application and review of the initiative petition:

Printing of booklets is \$1,300.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

STATEMENT IN SUPPORT

Marijuana prohibition has been just as ineffective, inefficient, and counterproductive as alcohol prohibition. It's time for a more sensible approach.

Ballot Measure 2 will end the failed policy of marijuana prohibition in Alaska and replace it with a system in which:

- Personal use, possession, and limited home-growing of marijuana is legal for adults 21 and older; and
- Marijuana is regulated and taxed like alcohol.

Government studies and scientific research have consistently concluded that even the most potent marijuana, in concentrate or any other form, is far less harmful than alcohol to the consumer and to society. It's less addictive, less damaging to the body, and far less likely to trigger violent and reckless behavior.^{1,2} Adults who prefer to use marijuana instead of alcohol shouldn't be punished for making a safer choice.

There were 2,219 arrests for marijuana offenses in Alaska in 2010, of which 91% were for possession alone.³ Measure 2 would allow law enforcement to spend their time and limited resources addressing serious crimes instead of arresting and prosecuting adults for using a less harmful substance than alcohol.

Current marijuana prohibition laws force marijuana sales into the underground market where they're controlled by criminal enterprises. Measure 2 will replace the underground market with a tightly regulated system of licensed marijuana businesses that will create good jobs for Alaskans and generate tax revenue for the state and localities. It will also create business and ancillary industries, such as construction, real estate, and accounting. Localities will have the right to ban marijuana establishments.

State officials will create and enforce rules governing the production and sale of marijuana, such as testing, packaging, labeling requirements, and restrictions on advertising.

A regulated market will provide a safer environment for adults to purchase marijuana, and it will reduce their exposure to other illegal substances. It will also more effectively prevent teens from purchasing marijuana. It will remain illegal to sell or provide marijuana to minors, and proof of age will be required to purchase marijuana. Those selling marijuana in the underground market do not ask for ID.

In Colorado, where voters approved a similar measure in 2012, officials have reported no instances of businesses illegally selling marijuana to minors.⁴ Since the state began regulating hundreds of marijuana-related businesses in 2010, teen marijuana use hasn't increased, high school graduation rates have increased, and drop-out rates have decreased.^{5,6}

Implementation of the Colorado law hasn't contributed to an increase in crime, and violent crime decreased statewide in the first year in which marijuana was legal for adults.⁷ The number of fatal vehicle crashes dropped more than 25% during the first four months of legal marijuana sales compared to the same period the previous year.⁸

Statewide support for ending marijuana prohibition has increased in Colorado since legal adult marijuana sales began.⁹

Regulating marijuana works.

Christopher Rempert, Political Director and Treasurer/Campaign to Regulate Marijuana Like Alcohol

1 U.S. Institute of Medicine.

2 World Health Organization.

3 American Civil Liberties Union.

4 Colorado Department of Revenue.

5 U.S. Centers for Disease Control

6 Colorado Department of Education.

7 Colorado Bureau of Investigation.

8 Colorado State Patrol.

9 Public Policy Polling.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

STATEMENT IN OPPOSITION

Big Marijuana. Big Mistake. Vote No on 2

Against the best interests of our State, Proposition 2 seeks to legalize, commercialize, advertise, and industrialize marijuana and concentrated marijuana products (such as "shatter," "butane hash oil," and marijuana "Ring Pots") in Alaska. The Initiative is costly, extreme, premature, and will unduly harm Alaskan communities, businesses, families, and our youth. We urge you to Vote No on 2 because:

- 1. The Initiative is Far Too Costly.** The State of Alaska estimates that this initiative could increase costs to State Government by over \$7 million/year, including increased costs for child neglect and DUIs. Also, the Alaska Association of Chiefs of Police estimates that the initiative will increase costs to small towns and cities by \$6 million. These are just the costs to state government and police. Based on evidence, for every \$1 of taxes raised, the social, productivity, business, and health costs of substances like marijuana will be \$10. Costs include: lost productivity, increased accidents, harm to youth, harm to families, and increased health costs.
- 2. The Initiative Legalizes the Manufacturing, Advertising, Marketing, Transport and Consumption of Extreme Products like Shatter, Butane Hash Oil and Dangerous, Child-Friendly Edibles.** The Initiative specifically defines marijuana to include all marijuana concentrates and products. This would legalize the manufacturing, advertising, marketing, transport and consumption of such extreme products as 80-90% THC shatter, butane hash oil, and crumble. We recommend all voters Google shatter and butane hash oil before voting. Two people have already died in Colorado from child-friendly marijuana edibles, and emergency room visits have increased.
- 3. The Initiative Eliminates the local option for communities in Alaska to be dry on marijuana.**
- 4. This Initiative Will Not Eradicate the Illegal Trafficking of Marijuana.** If this initiative passes, there will be: illegal sales of marijuana to youth; illegal export of marijuana, and illegal sales to adults (just as there are in Colorado now after legalization).
- 5. Do Alaskans Really Want Another Major Industry Promoting the Increased Use of Another Harmful Intoxicant? No.** There is so much evidence that marijuana is harmful to fetuses, developing brains, motivation, judgment (including while driving), mental health, lungs, hearts and more.
- 6. Large Outside Interests are Funding the Initiative.** Follow the money. Big marijuana. Big mistake.
- 7. Rates of Use by our Youth Will Increase.** Public Health science is very clear. If this initiative passes, youth use rates of marijuana, including shatter, butane hash oil, and edibles will increase.
- 8. There is No Reason to Rush into Making a Mistake.** We deserve to see what happens in Colorado and make a more informed decision about what is best for Alaskans. Let's see how the pervasive advertising of marijuana and marijuana products works out; how many lawsuits there are from the marijuana industry; and what marijuana lobbyists do. Let's examine the increases in emergency room visits and deaths. There is no rush in Alaska to make a mistake.

The costs of this outside-funded initiative are far too great. Vote No on 2.

(Please Visit the Website: <http://www.bigmarijuanabigmistake.org/> for More Information)

Mike Williams, Akiak, Chair. Big Marijuana. Big Mistake.

Joe Byrnes, Fairbanks, Deputy Treasurer. Big Marijuana. Big Mistake.

Deborah Williams, Anchorage, Deputy Treasurer. Big Marijuana. Big Mistake

The statement printed on this page is the opinion of the author(s) and is presented as submitted to the Division of Elections.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

FULL TEXT OF PROPOSED LAW

"An Act to tax and regulate the production, sale, and use of marijuana."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

*Section 1. AS 17 is amended by adding a new chapter to read:

Chapter 38. The regulation of marijuana

Sec. 17.38.010. Purpose and findings.

(a) In the interest of allowing law enforcement to focus on violent and property crimes, and to enhance individual freedom, the people of the state of Alaska find and declare that the use of marijuana should be legal for persons 21 years of age or older.

(b) In the interest of the health and public safety of our citizenry, the people of the state of Alaska further find and declare that the production and sale of marijuana should be regulated so that:

(1) Individuals will have to show proof of age before purchasing marijuana;

(2) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and

(3) Marijuana sold by regulated businesses will be labeled and subject to additional regulations to ensure that consumers are informed and protected.

(c) The people of the state of Alaska further declare that the provisions of this Act are not intended to diminish the right to privacy as interpreted by the Alaska Supreme Court in *Ravin v. State of Alaska*.

(d) Nothing in this Act proposes or intends to require any individual or entity to engage in any conduct that violates federal law, or exempt any individual or entity from any requirement of federal law, or pose any obstacle to federal enforcement of federal law.

Sec. 17.38.020. Personal use of marijuana.

Notwithstanding any other provision of law, except as otherwise provided in this chapter, the following acts, by persons 21 years of age or older, are lawful and shall not be a criminal or civil offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law:

(a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana;

(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown;

(c) 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;

(d) Consumption of marijuana, except that nothing in this chapter shall permit the consumption of marijuana in public; and

(e) Assisting another person who is 21 years of age or older in any of the acts described in paragraphs (a) through (d) of this section.

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

Sec. 17.38.030. Restrictions on personal cultivation, penalty.

- a) The personal cultivation of marijuana described in AS 17.38.020(b) is subject to the following terms:
- (1) Marijuana plants shall be cultivated in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aids.
 - (2) A person who cultivates marijuana must take reasonable precautions to ensure the plants are secure from unauthorized access.
 - (3) Marijuana cultivation may only occur on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property
- (b) A person who violates this section while otherwise acting in compliance with AS 17.38.020(b) is guilty of a violation punishable by a fine of up to \$750.

Sec. 17.38.040. Public consumption banned, penalty.

It is unlawful to consume marijuana in public. A person who violates this section is guilty of a violation punishable by a fine of up to \$100.

Sec. 17.38.050. False identification, penalty.

- (a) A person who is under 21 years of age may not present or offer to a marijuana establishment or the marijuana establishment's agent or employee any written or oral evidence of age that is false, fraudulent or not actually the person's own, for the purpose of:
- (1) Purchasing, attempting to purchase or otherwise procuring or attempting to procure marijuana or marijuana products; or
 - (2) Gaining access to a marijuana establishment.
- (b) A person who violates this section is guilty of a violation punishable by a fine of up to \$400.

Sec. 17.38.060. Marijuana accessories authorized.

Notwithstanding any other provision of law, it is lawful and shall not be an offense under Alaska law or the law of any political subdivision of Alaska or be a basis for seizure or forfeiture of assets under Alaska law for persons 21 years of age or older to manufacture, possess, or purchase marijuana accessories, or to distribute or sell marijuana accessories to a person who is 21 years of age or older.

Sec. 17.38.070. Lawful operation of marijuana-related facilities.

- (a) Notwithstanding any other provision of law, the following acts, when performed by a retail marijuana store 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 retail marijuana store, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:
- (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;

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

- (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.

(b) Notwithstanding any other provision of law, the following acts, when performed by a marijuana cultivation facility 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 cultivation facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

- (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.

(c) Notwithstanding any other provision of law, the following acts, when performed by a marijuana product manufacturing facility 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 product manufacturing facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

- (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.

(d) Notwithstanding any other provision of law, the following acts, when performed by a marijuana testing facility 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 testing facility, are lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law:

- (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

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

- (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.
- (e) Notwithstanding any other provision of law, it is lawful and shall not be an offense under Alaska law or be a basis for seizure or forfeiture of assets under Alaska law to lease or otherwise allow the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with paragraphs (a) through (d) of this section.
- (f) Nothing in this section prevents the imposition of penalties upon marijuana establishments for violating this chapter or rules adopted by the board or local governments pursuant to this chapter.
- (g) The provisions of AS 17.30.020 do not apply to marijuana establishments.

Sec. 17.38.080. Marijuana Control Board.

At any time, the legislature may create a Marijuana Control Board in the Department of Commerce, Community, and Economic Development or its successor agency to assume the power, duties, and responsibilities delegated to the Alcoholic Beverage Control Board under this chapter.

Sec. 17.38.090. Rulemaking.

- (a) Not later than nine months after the effective date of this act, the board shall adopt regulations necessary for implementation of this chapter. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include:
 - (1) Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a marijuana establishment, with such procedures subject to all requirements of AS 44.62, the Administrative Procedure Act;
 - (2) A schedule of application, registration and renewal fees, provided, 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;
 - (3) Qualifications for registration that are directly and demonstrably related to the operation of a marijuana establishment;
 - (4) Security requirements for marijuana establishments, including for the transportation of marijuana by marijuana establishments;
 - (5) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of 21;
 - (6) Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;
 - (7) Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;
 - (8) Reasonable restrictions on the advertising and display of marijuana and marijuana products; and
 - (9) Civil penalties for the failure to comply with regulations made pursuant to this chapter.
- (b) In order to ensure that individual privacy is protected, the board shall not require

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers.

Sec. 17.38.100. Marijuana establishment registrations.

- (a) Each application or renewal application for a registration to operate a marijuana establishment shall be submitted to the board. A renewal application may be submitted up to 90 days prior to the expiration of the marijuana establishment's registration.
- (b) The board shall begin accepting and processing applications to operate marijuana establishments one year after the effective date of this act.
- (c) Upon receiving an application or renewal application for a marijuana establishment, the board shall 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 desires to operate the marijuana establishment, unless the local government has not designated a local regulatory authority pursuant to AS 17.38.110(c).
- (d) Within 45 to 90 days after receiving an application or renewal application, the board shall issue an annual registration to the applicant unless the board finds the applicant is not in compliance with regulations enacted pursuant to AS 17.38.090 or the board is notified by the relevant local government that the applicant is not in compliance with ordinances and regulations made pursuant to AS 17.38.110 and in effect at the time of application.
- (e) If a local government has enacted a numerical limit on the number of marijuana establishments and a greater number of applicants seek registrations, the board shall solicit and consider input from the local regulatory authority as to the local government's preference or preferences for registration.
- (f) Upon denial of an application, the board shall notify the applicant in writing of the specific reason for its denial.
- (g) Every marijuana establishment registration shall specify the location where the marijuana establishment will operate. A separate registration shall be required for each location at which a marijuana establishment operates.
- (h) Marijuana establishments and the books and records maintained and created by marijuana establishments are subject to inspection by the board.

Sec. 17.38.110. Local control.

- (a) A local government may 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.
- (b) A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner and number of marijuana establishment operations. A local government may establish civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local government.
- (c) A local government may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a marijuana establishment within the boundaries of the local government. The local government may provide that the local regulatory authority may issue such registrations should the issuance by the local government become necessary because of a failure by the board to adopt regulations

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

pursuant to AS 17.38.090 or to accept or process applications in accordance with AS 17.38.100.

(d) A local government may establish procedures for the issuance, suspension, and revocation of a registration issued by the local government in accordance with (f) of this section or (g) of this section. These procedures shall be subject to all requirements of AS 44.62, the Administrative Procedure Act.

(e) A local government may establish a schedule of annual operating, registration, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a local government in accordance with (f) of this section and a registration fee shall only be due if a registration is issued by a local government in accordance with (f) of this section or (g) of this section.

(f) If the board does not issue a registration to an applicant within 90 days of receipt of the application filed in accordance with AS 17.38.100 and does not notify the applicant of the specific, permissible reason for its denial, in writing and within such time period, or if the board has adopted regulations pursuant to AS 17.38.090 and has accepted applications pursuant to AS 17.38.100 but has not issued any registrations by 15 months after the effective date of this act, the applicant may resubmit its application directly to the local regulatory authority, pursuant to (c) of this section, and the local regulatory authority may issue an annual registration to the applicant. If an application is submitted to a local regulatory authority under this paragraph, the board shall forward to the local regulatory authority the application fee paid by the applicant to the board upon request by the local regulatory authority.

(g) If the board does not adopt regulations required by AS 17.38.090, an applicant may submit an application directly to a local regulatory authority after one year after the effective date of this act and the local regulatory authority may issue an annual registration to the applicant.

(h) A local regulatory authority issuing a registration to an applicant shall do so within 90 days of receipt of the submitted or resubmitted application unless the local regulatory authority finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made pursuant to (b) of this section in effect at the time the application is submitted to the local regulatory authority. The local government shall notify the board if an annual registration has been issued to the applicant.

(i) A registration issued by a local government in accordance with (f) of this section or (g) of this section shall have the same force and effect as a registration issued by the board in accordance with AS 17.38.100. The holder of such registration shall not be subject to regulation or enforcement by the board during the term of that registration.

(j) A subsequent or renewed registration may be issued under (f) of this section on an annual basis only upon resubmission to the local government of a new application submitted to the board pursuant to AS 17.38.100.

(k) A subsequent or renewed registration may be issued under (g) of this section on an annual basis if the board has not adopted regulations required by AS 17.38.090 at least 90 days prior to the date upon which such subsequent or renewed registration would be effective or if the board has adopted regulations pursuant to AS 17.38.090 but has not, at least 90 days after the adoption of such regulations, issued registrations pursuant to AS 17.38.100.

(l) Nothing in this section shall limit such relief as may be available to an aggrieved party

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

under AS 44.62, the Administrative Procedure Act.

Sec. 17.38.120. Employers, driving, minors and control of property.

- (a) Nothing in this chapter is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.
- (b) Nothing in this chapter is intended to allow driving under the influence of marijuana or to supersede laws related to driving under the influence of marijuana.
- (c) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of 21.
- (d) Nothing in this chapter shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

Sec. 17.38.130. Impact on medical marijuana law.

Nothing in this chapter shall be construed to limit any privileges or rights of a medical marijuana patient or medical marijuana caregiver under AS 17.37.

Sec. 17.38.900. Definitions.

As used in this chapter unless the context otherwise requires:

- (1) "Board" means the Alcoholic Beverage Control Board established by AS 04.06.
- (2) "Consumer" means a person 21 years of age or older who purchases marijuana or marijuana products for personal use by persons 21 years of age or older, but not for resale to others.
- (3) "Consumption" means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.
- (4) "Local government" means both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities.
- (5) "Local regulatory authority" means the office or entity designated to process marijuana establishment applications by a local government.
- (6) "Marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.
- (7) "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.
- (8) "Marijuana cultivation facility" means an entity registered to cultivate, prepare, and

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

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.

(9) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

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

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

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

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

(14) "Unreasonably impracticable" means that the 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.

*Sec. 2. AS 43 is amended by adding a new chapter to read:

Chapter 61. Excise tax on marijuana

Sec. 43.61.010. Marijuana tax.

(a) An excise tax is imposed on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility. Every marijuana cultivation facility shall pay an excise tax at the rate of \$50 per ounce, or proportionate part thereof, on marijuana that is sold or transferred from a marijuana cultivation facility to a retail marijuana store or marijuana product manufacturing facility.

(b) The department may exempt certain parts of the marijuana plant from the excise tax described in (a) of this section or may establish a rate lower than \$50 per ounce for certain parts of the marijuana plant.

Sec. 43.61.020. Monthly Statement and Payments.

(a) Each marijuana cultivation facility shall send a statement by mail or electronically to the department on or before the last day of each calendar month. The statement must contain an account of the amount of marijuana sold or transferred to retail marijuana stores and marijuana product manufacturing facilities in the state during the preceding month, setting out

- (1) the total number of ounces, including fractional ounces sold or transferred;
- (2) the names and Alaska address of each buyer and transferee; and
- (3) the weight of marijuana sold or transferred to the respective buyers or transferees.

(b) The marijuana cultivation facility shall pay monthly to the department, all taxes, computed at the rates prescribed in this chapter, on the respective total quantities of the

The text of this bill is presented as submitted by petition sponsors.

Ballot Measure No. 2

An Act to Tax and Regulate the Production, Sale, and Use of Marijuana

marijuana sold or transferred during the preceding month. The monthly return shall be filed and the tax paid on or before the last day of each month to cover the preceding month.

Sec. 43.61.030. Administration and Enforcement of Tax.

(a) Delinquent payments under this chapter shall subject the marijuana cultivation facility to civil penalties under AS 43.05.220.

(b) If a marijuana cultivation facility fails to pay the tax to the state the marijuana cultivation facility's registration may be revoked in accordance with procedures established under AS 17.38.090(a)(1).

***Sec. 3.** The provisions of this Act are independent and severable, and, except where otherwise indicated in the text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions. If any provision of this Act, or the application thereof to any person or circumstance, is found to be invalid or unconstitutional, the remainder of this Act shall not be affected and shall be given effect to the fullest extent possible.