ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2015-38(b)(am)

An Ordinance Amending the Land Use Code to Provide for the Regulation of Marijuana Use and Marijuana Establishments and Providing for a Penalty.

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 Chapter. CBJ 49.65 Specified Use Provisions, is amended by adding a new article to read:

ARTICLE XI. MARIJUANA ESTABLISHMENTS

49.65.1200 Purpose.

It is the purpose of this article to establish reasonable regulations that allow for the operation of marijuana establishments within the City and Borough in a manner that promotes public health, safety, and general welfare. It is not the intent of this chapter to authorize anything specifically prohibited by State law.

49.65.1205 License required.

(a) No person may operate a marijuana establishment within the City and Borough without a conditional use permit, a valid license issued by the City and Borough, and a valid license issued by the State of Alaska. The following types of licenses may be issued under this article:

(1) Marijuana retail store license;

(2) Marijuana cultivation facility license;

(3) Marijuana product manufacturing facility license; and

(4) Marijuana testing facility license.
(b) A separate license shall be required for each specific business or business entity or for each specific location identified on the license as the licensed premise.

(c) Upon denial or revocation of a marijuana establishment license issued by the State of Alaska, any license issued by the City and Borough under this article shall be null and void. If a court of competent jurisdiction determines that the issuance of local licenses violates State or federal law, all licenses issued under this article shall be deemed immediately revoked by operation of law, with no grounds for appeal or redress on behalf of the licensee.

49.65.1210 Prohibited Acts.

(a) It is unlawful for any licensee to engage in business contrary to any term or condition of any City and Borough of Juneau marijuana establishment license or any provision of this article.

(b) It is unlawful for any person to obtain or attempt to obtain a license by making a false statement in any application for a license, or by any other fraudulent or deceptive means.

(c) It is unlawful for any person to forge, counterfeit, or fraudulently alter a license issued under this chapter.

(d) It is unlawful for any person to obstruct, impede or otherwise refuse to allow an administrative inspection authorized under CBJ 49.65.1240.

(e) It is unlawful for any person licensed or regulated under this article to knowingly or willfully authorize, order, instruct or permit an employee, agent or person under the licensee's control to act in connection with the licensed activity which violates any provision of this article or any license issued under this article.

49.65.1215 Application for license.

(a) An applicant for a marijuana establishment license shall submit an application on a form provided by the director accompanied by the appropriate fee. Applications must include the following documentation:

1. If the applicant is not a natural person, the organizational documents for all entities identified in the application;

2. A copy of the lease or deed for the property upon which the marijuana establishment will be located;

3. A list of all other uses on the property;

4. A statement verifying compliance with any buffer requirements imposed by 3 AAC Chapter 306 of the Alaska Administrative Code;
(5) A copy of the Notice of Decision approving the conditional use permit by the City and Borough of Juneau Planning Commission; and

(6) Any additional documentation determined by the director to be necessary to make a decision whether to approve or deny the license application, or approve with conditions.

49.65.1220 Term of license; renewal.

(a) No license granted or issued under any of the provisions of this title shall be in any manner assignable or transferable.

(b) Licenses are valid only as long as the applicant holds a current license from the State and is in compliance with the applicable conditional use permit.

(c) Licenses issued under this chapter are effective from the date of issuance through December 31 of the same year.

(d) In order to be eligible for renewal, a licensee must submit proof of inspection by the department or the department’s designees for compliance with this chapter and any applicable permit. The licensee shall schedule the inspection no later than sixty days prior to the annual expiration of the license.

(e) Licenses shall automatically renew on January 1, conditional upon the timely remittance of the annual license fee and proof of inspection. Failure to timely remit proof of inspection or the annual license fee shall result in the license expiring and will require a new license application.

49.65.1225 Corrective orders.

(a) The director may issue a corrective order whenever a licensee:

   (1) Has violated any provision of this chapter;
   (2) Has relinquished legal control of the licensed establishment to any other person;
   (3) Has failed, refused or neglected to comply with any provision of the license issued under this chapter, any conditional use permit issued for the marijuana establishment, or any provision of Alaska Statute Chapter 17.38 or regulations adopted pursuant to that chapter;

(b) A corrective order shall be served on the licensee by hand-delivery or certified mail and shall specify:

   (1) The provision of the license, State law, or CBJ code that has been violated;
   (2) The corrective action, if any, the licensee may take to prevent suspension or revocation
of the license, and the time limited for such corrective action, which shall be no earlier than seven (7) days following date of issuance of the corrective order;

(3) Notification of the penalties provided by this title; and

(4) That the licensee may request an informal meeting before the director prior to suspension or revocation of the license in order to allow the licensee to contest the grounds for issuance of the corrective order and to provide the licensee the opportunity to provide information to the director relevant to the grounds for the corrective order.

(c) Based on information timely received from the licensee, or from any other source, the director may amend the terms or conditions of the corrective order, or after consideration of the information provided by the licensee, affirm the corrective order as issued.

49.65.1230 License suspension or revocation.

(a) Upon the expiration of the time allowed in a corrective order issued in CBJ 49.65.1225, if the licensee has not complied with the corrective order, the marijuana establishment license may be suspended or revoked, as determined by the director. Upon suspension or revocation of any license, the director shall notify the person whose license has been suspended or revoked by certified mail or by hand-delivery. Following such suspension or revocation and after notification, it is unlawful for the licensee to continue to operate the marijuana establishment.

(b) In deciding whether a license should be suspended or revoked, and in deciding what conditions to impose in the event of a suspension, if any, the director shall consider:

(i) The nature and seriousness of the violation;

(ii) Corrective action, if any, taken by the licensee;

(iii) Prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of any prior corrective action;

(iv) The likelihood of recurrence;

(v) All circumstances surrounding the violation;

(vi) Whether the violation was willful;

(vii) The length of time the license has been held by the licensee;

(viii) The number of violations by the licensee within the applicable 12 month period;

(ix) Previous sanctions imposed, if any, against the licensee; and
(x) Any other factor making the situation with respect to the licensee or the licensed premises unique or the violation of greater concern.

(c) Any person whose marijuana establishment license has been revoked shall be prohibited from applying for a license under this chapter for a period of one year.

49.65.1235 Appeal.

The denial, revocation, or suspension of a marijuana establishment license is appealable to the assembly in accordance with CBJ 01.50.

49.65.1240 Inspection of premises.

(a) A marijuana establishment or an applicant for a marijuana establishment license under this chapter shall, upon request, make the licensed premises or the proposed licensed premises, including any place for storage, available for inspection by the director for the purpose of ensuring compliance with this chapter and any applicable marijuana establishment license. Inspection shall include access to any marijuana or marijuana product on the premises, equipment used in cultivating, processing, manufacturing, testing or storing marijuana, the inventory tracking system and business records of the licensee or applicant.

49.65.1245 Marijuana establishment conditional use permits.

(a) In addition to the permit application and supporting materials required by CBJ 49.15.330(c), an applicant for a conditional use permit for a marijuana establishment must submit the following additional materials:

1. A site plan of all buildings on the property where the marijuana use will be located, including, but not limited to: a floor plan showing how the floor space is or will be used to include but not limited to restricted access areas and the total floor area of the building(s);

2. A security plan indicating how the applicant will comply with the requirements imposed by State law;

3. A waste disposal plan indicating how the applicant will comply with the requirements imposed by State law;

4. A screening plan illustrating the applicants compliance with AS 17.38.070 making it unlawful to display marijuana or marijuana products in a manner that is visible to the general public from a public right-of-way;

5. If the establishment is to be served by a private septic system, certification from a registered, qualified engineer licensed by the State of Alaska that the system has adequate capacity for the proposed use, or will with improvements;
(6) Marijuana cultivation facility license applicants must provide a ventilation and filtration plan describing the systems that will be used to ensure compliance with CBJ 49.65.1260 and whether the applicant intends on using carbon dioxide. The applicant shall specify if carbon dioxide enrichment will be used in cultivation and by what means the carbon dioxide will be produced. Plans should indicate the storage area for fuels used to produce carbon dioxide;

(7) Marijuana product manufacturing facility license applicants, marijuana cultivation facility license applicants, and marijuana testing facility license applicants must specify all means to be used for cultivating, growing, extracting, heating, washing or otherwise changing the form of the marijuana plant, along with proposed ventilation and safety measures to be implemented for each process;

(8) Marijuana cultivation facility license applicants and marijuana product manufacturing facility license applicants must specify the methods to be used to prevent the growth of harmful mold and compliance with limitations on discharge into the wastewater system; and

(9) Any additional documentation determined by the director to be necessary for the commission to make a decision whether to approve or deny the permit, or approve with conditions, to ensure compliance with this chapter or CBJ 49.15.330(f).

(b) If a licensee desires to modify the licensed premises by changes to equipment, increased use, such as in accordance with an approved State license endorsement, or any approved plan, an amendment to the original application and required fee shall be submitted for review and approval.

(c) In addition to any conditions imposed under CBJ 49.15.330(g), the commission may impose any conditions necessary to ensure compliance with this chapter or State law or designed to mitigate impacts of the development on surrounding residences.

(d) The commission shall impose as a condition of any permit issued by the commission under this title a requirement that the applicant submit a complete copy of the applicant's approved state license application to the department for review prior to operating. If the director determines there are substantive inconsistencies between the state license application and the conditional use permit application, the commission shall review the development for consistency with this title.

(e) Conditional use permits issued to marijuana establishments under this chapter shall be subject to review by the commission every five years from the date of issuance. Such review shall be subject to CBJ 49.15.330 except that the commission may only amend or add conditions if necessary to ensure compliance with this title. If an appeal challenging the amendments to a conditional use permit is filed, the new conditions shall be stayed and the existing permit shall govern the operations of the marijuana establishment until the conclusion of the appeal. The scope of review on appeal is restricted solely to the amended conditions.
49.65.1250 Hours of operation – marijuana retail stores.

Unless otherwise specified by a conditional use permit, licensed premises may not be open between the hours of 1 a.m. and 8 a.m., Monday through Sunday. No marijuana may be distributed, sold or dispensed at a licensed premises when the licensed premises is required to be closed pursuant to this section.

49.65.1255 Documents to be displayed.

(a) A licensee shall prominently display the marijuana establishment license, in the same size and font as the original license issued by the director, in a conspicuous location inside the licensed premises near the main entrance.

(b) A licensee shall display two separate warning signs as follows:

(1) A sign containing the following health warnings:

(A) “Marijuana has intoxicating effects and may be habit forming.”;

(B) “Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence.”;

(C) “There may be health risks associated with consumption of marijuana.”;

(D) “For use only by adults twenty-one and older. Keep out of the reach of children.”; and

(E) “Marijuana should not be used by women who are pregnant or breastfeeding.”

(2) A sign containing the following warnings:

(A) “Consumption of marijuana in public is prohibited by law. AS 17.38.040; CBJ 42.20.230.”; and

(B) “The transportation or shipment of marijuana and marijuana products outside of the City and Borough of Juneau by U.S. mail, air travel or in the waters of the United States is prohibited by federal law. AS 17.38.010(d).”

(c) The warning signs required by subsection (b) of this section must be at least 11 inches by 14 inches in size, and the lettering must be at least one-half inch high and in contrasting colors. The warning signs must be displayed in conspicuous locations inside the licensed premises near the main entrance.
49.65.1260 Odor.

All marijuana establishments shall utilize a ventilation and odor system that prohibits the detection of noxious odors from outside the licensed premises. For purposes of this section, noxious odors are those odors detectable outside of the licensed premises that a reasonable person of ordinary sensibilities would find negatively affects the person’s enjoyment of life, health or property.

49.65.1265 Marijuana cultivation in the D-1 zoning district.

(a) Marijuana cultivation facilities located in the D-1 zoning district shall be an accessory use. An owner or manager must live on the same lot as the licensed premises.

(b) In the D-1 zoning district, the minimum setback for marijuana facilities shall be at least 25 feet from the facility to any property line.

49.65.1270 Penalty.

(a) A person who violates or causes or permits to be violated a provision of this chapter is guilty of a civil violation. Each and every day during which a violation of this chapter is committed, permitted, or continued shall be treated as a separate offense and subject the offender to separate charges and fines, in accordance with CBJ 03.30.075. Civil fines and penalties for violations of this chapter may be imposed in addition to any other remedies provided by law, including the imposition of corrective orders or license actions authorized by this chapter.

(b) In addition to any other remedies provided by law, the City and Borough may seek a court order enjoining the continued operation, within the municipality, of any business whose owner or operator fails to comply with correction orders issued under CBJ 49.65.1225, terms of any decision on appeal under CBJ 49.65.1235, or who fails to cease operation following suspension or revocation of a license under CBJ 49.65.1230.

Section 3. Amendment of Section. CBJ 49.80.120 Definitions, is amended by the addition of the following definitions to be incorporated in alphabetical order:

*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.

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Marijuana cultivation facility means an entity that cultivates, prepares, and packages marijuana and sells marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Marijuana product manufacturing facility means an entity that purchases marijuana; manufactures, prepares, and packages marijuana products; and sells marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana retail store means an entity that purchases marijuana from marijuana cultivation facilities, purchases marijuana and marijuana products from marijuana product manufacturing facilities, and sells marijuana and marijuana products to consumers.

Marijuana testing facility means an entity that analyzes and certifies the safety and potency of marijuana.

Section 4. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

Processing fees are established for each development, platting and other land use action in accordance with the following schedule:

... (19) Marijuana license fee, $250.

Section 5. Amendment of Table. CBJ 03.30.070 Violations; civil fines, is amended to read:

03.30.070 Violations; civil fines.

(a) Notwithstanding any provision of the CBJ Code to the contrary, the offenses listed in the table below shall be considered violations subject to a civil fine not to exceed that set forth in the table below; payment of the listed civil fine shall be accepted in satisfaction of the violation; and the violation shall be subject to the procedure set forth in CBJ 03.30.075—03.30.085:

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<th>CBJ</th>
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### 49.65  Marijuana Establishments

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<tr>
<td>49.65.1110</td>
<td>Prohibited acts</td>
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<td>49.65.1140</td>
<td>Inspection of premises</td>
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<tr>
<td>49.65.1145(b)</td>
<td>Modification of licensed premises requires amendment of conditional use permit</td>
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<td>Documents to be displayed</td>
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### Section 6. Amendment of Table. Section 49.25.300 Table of Permissible Uses, is amended at Note AB, to read as follows:

AB. Use is prohibited in the urban service area but allowed outside the urban service area as an accessory use. An owner or manager must live on site.

### Section 7. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 2nd day of May, 2016.

Attest:

Kerdell D. Koelsch, Mayor

Laurie J. Sica, Municipal Clerk