

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.

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. A fine of \$100 shall be assessed for violation of this section.

8.30.050 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.

8.30.060 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.

8.30.070 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

MEMORANDUM

To: Chris Hladick
City Manager

Shirley Marquardt
Mayor

Patrick Jordan
Assistant City Manager

From: Boyd, Chandler & Falconer, LLP
Charles A. Cacciola

Date: February 2, 2015

Re: Marijuana Ordinance

Chris asked us to prepare an ordinance to prohibit public marijuana use and limit marijuana cultivation for personal use.

We believe it best to proceed with the understanding that a body of local regulation will develop over time, particularly as the state and ABC clarify existing regulations. Therefore, we have created a new chapter for the Unalaska Code of Ordinances to house marijuana regulation and, following input from Mayor Marquardt, have designated the city council as the regulatory authority.

For the purpose of prohibiting public use, the definition of “public place” is similar to the definition in the Secondhand Smoke chapter, except that we have struck “enclosed” and broadened the examples to specify open spaces such as roads and parks. The definition also includes *all* city property even if the space is not open to the public. Examples of public places are provided to give guidance for enforcement as well as notice to potential offenders. We believe that this definition provides the broadest restriction on public use permissible. If the City would like to further restrict quasi-public use, such as use in an automobile or boat (distinct from operating under the influence of marijuana, which is a crime under state law), further restrictions are viable based upon the inherent authority of municipal government to regulate public safety even if the restrictions fall outside of public use.

State law limits public use fines to \$100. We have therefore set the fine for public use at \$100. The City cannot implement a fine higher than this, though it can require court appearances for a first or subsequent offense.

Fining an establishment that condones public use may prove to be a better enforcement mechanism for some public use violations, such as use in bars. State law allows fines in excess of \$100 for an establishment that permits patrons to use marijuana on the premises. We have set the fine at \$100 for a first offense and \$500 for subsequent offenses. The amounts can be amended as the City sees fit, but cannot exceed \$500 if the violation is to be enforced as a minor offense. The fine for “commercial cultivation” is set as \$500 per plant in excess of six or three budding plants.

State marijuana law permits a person to grow up to six marijuana plants. A grow operation larger than six plants could be lawful on the basis of several people participating in one grow. To prevent this, cultivation of more than six plants in one dwelling unit, non-dwelling structure, or in one place outdoors, as well as the cultivation of *any* plants by a business, is defined as commercial cultivation and thus prohibited unless expressly licensed. Further, state law prohibits marijuana cultivation where the marijuana is subject to public view, which significantly restricts outdoors marijuana grows in Unalaska.

The ordinance also creates a minor offense for any possession or use by a person under the age of 21. The fine for this is currently set at \$100 for the first offense and \$300 for subsequent offenses.

Please let us know if you have any questions regarding the proposed ordinances or would like to discuss further ordinances relating to marijuana use or cultivation. Please keep in mind that possession of up to 1 ounce of marijuana becomes legal February 24 so this ordinance needs to move quickly through the council. Please let us know if you would like us to attend either the February 10 or February 24 meeting telephonically or in Unalaska. We will also provide a memo to city employees regarding marijuana use.