

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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MARIJUANA PRIVATE CLUB TASK FORCE

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MEETING

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FRIDAY
MAY 20, 2016

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The Marijuana Private Club Task Force met in Conference Room 216, 899 North Capitol Street NE, Washington, DC, at 10:05 a.m., LaQuandra Nesbitt, Chair, presiding.

PRESENT

LAQUANDRA NESBITT, M.D., M.P.H., Director, Department of Health

MICHELE BLACKWELL, Legislative Director, Office of Councilmember

Brandon Todd

MELINDA BOLLING, Director, Department of Consumer and Regulatory
Affairs

DANIELLE BURS, Legislative Director, Office of Councilmember

Brianne Nadeau

FRED MOOSALLY, Director, Alcoholic Beverage Regulation
Administration

KELLY O'MEARA, Director of Strategic Change, Metropolitan
Police Department

MAUREEN ZANIEL, Senior Assistant Attorney General, Office
of the Attorney General

ALSO PRESENT

JORGE AGUILERA, Health Licensing and Regulation

PATRICE DICKERSON, Office of Government Relations

JACQUELINE WATSON, D.O., Chief of Staff, Department of
Health

SHAUNA WHITE, Pharm.D., R.Ph., Executive Director, Board of
Pharmacy, Program Manager, Pharmaceutical Control

CARLA WILLIAMS, ESQ., Assistant General Counsel

MARCUS WILLIAMS, Director of Communications

Welcome: Chair Nesbitt called the meeting of the Marijuana Private Club Task Force to order at 10:05 am.

Review of Current Marijuana Use in the District of Columbia

This review used data obtained through the Youth Risk Behavior Surveillance System (YRBSS) and the Behavioral Risk Factors Surveillance System (BRFSS). The BRFSS data is recent as of 2013, as is the YRBSS. However, more recent data from the YRBSS can be expected in spring of 2016. For the period of 2011-2013, the following high level trends were found: men reported higher rates of use than women and African Americans reported higher rates of use than other racial and ethnic groups. The age group of 18-24 reported the highest rates of use and it was found that the rate declines as age increases. For peak users, the annual income was most commonly less than \$15,000. Wards 7 and 5 report the highest rates of use. Although 53.8% of the D.C. population has smoked at some point in their life, only 17.8% of the population reports being a current user.

Marijuana was found to be the second most common metabolite present in motor vehicle fatalities, with alcohol as the first. This data includes incidents where multiple metabolites were found in one individual. A similar data set for non-fatal traffic incidents cannot be reproduced because currently MPD does not look for other metabolites if alcohol is found in an individual during a traffic incident. Data regarding marijuana users and treatment services was gathered from the Department of Behavioral Health's Addiction, Prevention and Recovery Administration. This data only includes individuals who are seeking publically offered or funded treatment services and either report marijuana as their primary reason for pursuing substance abuse treatment or report marijuana as a secondary substance that they use but are not addicted to. A portion of this data could be the result of court-ordered treatment, and this rate of court-ordered treatment could increase as a push is made to send offenders to treatment programs instead of incarceration. More men were found entering treatment programs than women, and more African Americans were found entering treatment programs than other racial groups. One factor of this trend could be the disproportionality of race and ethnic minorities who are publically insured. Most of the individuals in this data set live in Ward 8.

Through data gathered about D.C. marijuana use and adolescents, it was found that only 11% of D.C.'s 12th graders believe that using marijuana compromises their long-term health. The average age of first marijuana use among middle schoolers is 10.9 years old, and marijuana is the most used substance among high school students. Between 2007 and 2012 there has been an 11% increase in the use of marijuana by high school students. Students who report highest use of marijuana tend to have a poor academic performance. There has been a decrease of arrests in DC for possession of marijuana.

Although the rate of arrests is still higher for African Americans than it is for other racial groups, the actual amount of arrests has decreased significantly from 2014 to 2015. This data applies to arrests where possession is the primary offense and only includes MPD arrests. The parameters have now been expanded to include all agency arrests.

Defining a Private Club in the District of Columbia

Chair Nesbitt compiled a list of points for the Task Force to consider when creating a definition for marijuana private clubs in DC. This list includes zoning restrictions, the admissibility of pop-up clubs, the degree of community notice needed, the establishment of geographic limits to prevent club concentration, and whether entities that host public events can also become a private club.

Under D.C. zoning laws, a private club is an IRS-registered non-profit that uses a building, facility, or premises for some common avocational purpose. Goods and services on the premises can only be sold to guests or members. Office space and activities must be limited to what is necessary to maintain the membership and the financial records of the organization. These zoning requirements must be met before a business license can be obtained. Private clubs do not have a specific category of business license within DCRA regulations and so get general business, public hall, hotel, or restaurant licenses depending on the circumstances.

Both DCRA and ABRA regulations specify that private club events are not open to the public and so can only be hosted and attended by members and their guests. However, private clubs can offer one-day memberships. Task Force members briefly discussed any legal issues that might arise from marijuana private clubs having to report to the IRS. It was determined that the clubs would likely not have trouble with federal regulations because they would not be selling marijuana for a profit or illegal paraphernalia. Many members of the Task Force agreed that marijuana private clubs should not be allowed in residential zones. For comparison, under ABRA's regulations, permanent licenses cannot be issued to entities in residential zones. However, ABRA does issue temporary licenses to entities in residential zones, and it was suggested that in the event that pop-up marijuana private clubs are permitted, they could be allowed in residential zones.

Members disagreed about whether pop-up clubs should be permitted. Those opposed argued that they would place too big of a burden on the regulatory and residential community and were also worried that they might not sufficiently address public health risks, while those in favor argued that these concerns could be mitigated by requiring a 45- to 60-day period of public notice. Ms. Zaniel also raised the point that IRS non-profit regulations may prevent a transient membership. Task Force members discussed why DCRA requires that private clubs be registered as non-profits. Chair Nesbitt raised the idea that doing so puts emphasis on the community created by private clubs, and thus allowing private clubs to be profitable companies might take away from their ability to be a safe space for the D.C. cannabis community. This being said, there might be some ABRA-licensed private clubs in D.C. that are for-profits. If this is the case, Mr. Moosally will compile a list of these clubs for the Task Force's next meeting.

Agenda for Next Meeting

At the Task Force's next meeting, the DCRA and ABRA representatives will come prepared to discuss their respective agency's definitions of and processes around private clubs and temporary establishments. The OAG will research the IRS regulations surrounding non-profits prior to the next meeting. The DOH has recommended that the level of restrictions in place for owners and operators of dispensaries and cultivation centers also be applied to owners and operators of private clubs, and so will bring a copy of these restrictions to the Task Force's next meeting. These restrictions are in the regulations and have been through the public comment period. The Task Force was unable to get through all of this meeting's agenda and so will adopt the remainder as its next meeting's agenda. This includes completing the discussion on defining a private club in the District of Columbia.

Review of Private Clubs in Other Jurisdictions

Assistant General Counsel Williams summarized her memo on marijuana private clubs and public consumptions in other states, with the understanding that the Task Force will discuss this further at the next meeting. This review included clubs in Alaska, Colorado, Oregon, and Washington. Alaska was the only state found to have marijuana private club policies at the state level. Alaskan policy allows marijuana to be consumed in designated areas on licensed premises as long as it is purchased on the premises. This policy is new and no licenses have been issued yet. Colorado and Oregon do not permit marijuana private clubs at the state level, but allow counties and towns to make their own rules governing marijuana private clubs. These private clubs still have to comply with any of their state's licensing and clean indoor air requirements. In Colorado, the Responsible Use Denver Initiative Ordinance would provide an exception to the term "public place" by allowing a premise, during a special event, to have a designated area for marijuana consumption that would not be considered a public place. There are currently efforts to legalize marijuana private clubs in Seattle, Washington. These clubs would permit the vaporization and eating of marijuana for those 21 and older, would prohibit alcoholic beverages, and would have minimum ventilation requirements. Ambiguity around and/or lack of laws governing marijuana private clubs has allowed some to operate illegally within certain states, such as Rhode Island and Arizona. In cases of ambiguity, many states use clean air acts as a way to prohibit marijuana private clubs. Some argue that hotel smoking rooms offer a loophole and could be used for marijuana private clubs, which appeals to some hotel owners as a way to increase business.

Q&A

Kate Bell from the Marijuana Policy Project responded to some of the points raised by Task Force members during the meeting. She finds it hard to believe that the IRS will register any marijuana private club as a nonprofit when marijuana is still federally illegal. Some states currently address this issue by requiring that marijuana private clubs register as nonprofits at the state level. However, these clubs must register as a business with the IRS and due to the federally illegal nature of their work are not permitted to take any business exceptions. She also clarified that in the marijuana and traffic fatalities data the presence of marijuana metabolites only indicated that marijuana has been consumed in recent weeks and thus did not necessarily cause impairment at the time of the accident.

Adjourn: There being no other comments, Chair Nesbitt adjourned the meeting at 11:10 am.