

MARIJUANA PRIVATE CLUB  
TASK FORCE REPORT 2016



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## **I. Executive Summary**

The passage of Initiative 71, which went into effect in the District of Columbia on February 26, 2015, legalized the possession, indoor home cultivation, and home use of limited amounts of marijuana by adults 21 years of age or above. However, the “Home Grow, Home Use” legislation had no impact on the continued federal prohibition on possession or use of marijuana for recreational purposes and the law prohibits smoking marijuana in public.

Pursuant to section 2(b) of the Marijuana Possession Decriminalization Clarification Temporary Amendment Act of 2016 (D.C. Law 21-0098), Mayor Muriel Bowser established the Marijuana Private Club Task Force to provide recommendations on the licensing and operation of facilities at which marijuana may be consumed within the provisions of the DC laws on the legal use of marijuana (i.e., the DC Uniform Controlled Substances Act of 1981). The Task Force was also asked to make recommendations on how such venues would be licensed and regulated in order to ensure the health and safety of all individuals who staff or utilize the services of these venues. In addition, the Task Force was requested to make recommendations on civil and criminal sanctions for violations of the law that might occur in private marijuana clubs.

The Task Force reviewed the current DC Municipal Regulations on private clubs. These regulations define a private club as a building or facility used or operated as an organization or association where goods, beverages, food and/or services are sold on the premises only to members or their guests. The private club must have a Certificate of Occupancy and must be registered with the Internal Revenue Service (IRS). Private clubs are allowed in all areas of the District except for residential zones. The organization running a private club must be a registered nonprofit and its sales and revenues must serve the public interest as defined by the IRS. Goods and services can only be sold on the premises to members or guests. Office space must be limited to what is necessary to maintain the membership and the financial records of the organization.

The Task Force reviewed legislation on private clubs in other jurisdictions. The review found that the recreational use of marijuana has been legalized in Alaska, Colorado, Oregon, and Washington. However, none of these states has authorized open and public consumption of marijuana, generally citing the provisions of the “Indoor Clean Air Act” as a reason for these restrictions. In addition, none of these states has yet authorized private marijuana clubs. However, some local jurisdictions, particularly Pueblo County, Colorado, have undertaken efforts to allow the operation of such clubs.

The Task Force agreed that if private clubs were to be permitted, the following conditions are recommended:

- membership should be limited to DC residents;
- terms of membership must be defined (e.g., monthly, quarterly, annually);
- individuals could join more than one club;
- a limit to the number of individuals using a club's facilities at any one time;
- clubs must compile a list of their guests 24 hours in advance;
- members should be permitted to host events for their guests with advance notice; however, these events should not be held at a cost for attendance (cover charge) to resemble night clubs or for-profit activities for the non-establishment host in any way;
- the development of "roving pop-up clubs" should not be considered;
- clubs should not be permitted to sell, serve, or permit the consumption of alcoholic beverages in licensed premises;
- marijuana could be stored at the club with an appropriate security plan.

However, the Task Force concluded that advocating for Marijuana Private Clubs at this time would be premature. Marijuana, unlike alcohol, is illegal federally, and therefore presents an immense challenge to create a commercially legal framework. The current zoning regulations and business licensing structure and requirements would not support marijuana clubs at this time. There would need to be a tax and regulation scheme in place. In addition, they expressed concerns about the lack of knowledge about what people are actually consuming: pesticides, amount of tetrahydrocannabinol (THC), etc. and, therefore, the potential risk to the overall health, safety, and well-being of District residents.

The Task Force decided that more comprehensive research, evaluation, and analysis of the effects of marijuana use on health and public safety would need to be conducted before supporting the creation of marijuana private clubs in the District.

## **II. Introduction**

The possession of small amounts of marijuana for recreational use was legalized in the District of Columbia in February 2015, with the passage of D.C. Law 20-0153, often referred to as Initiative 71. Under the terms of this legislation, District residents 21 years of age or above, can possess up to two ounces of marijuana for their personal use and can grow as many as six marijuana plants in their private residence, only three of which can be mature at any one time. While individuals 21 years of age or older may share or transfer up to one ounce of marijuana, selling or exchanging for remuneration any amount of marijuana remains a criminal offense. Under District law, marijuana cannot be smoked or consumed in a public place. It is important to know that federal law enforcement may enforce federal marijuana laws anywhere in the District.

The law's restriction on consuming marijuana in public places has brought out advocates for Marijuana Private Clubs. Proponents for such clubs have argued in favor of a place to smoke and consume marijuana legally, asserting that recreational marijuana should be treated similarly to the consumption of alcohol. They also argue that the law inadvertently promotes pot smoking in private homes, potentially around children, and discriminates against those who live in federal public housing, as marijuana possession remains illegal there.

In order to prevent the formation of unregulated marijuana-sharing organizations, Mayor Bowser sent legislation to the Council in January 2016 prohibiting the use of marijuana at nightclubs, private clubs, and virtually any other business registered by the District.

However, in light of proponents' concerns regarding the lack of a safe space to consume marijuana, Mayor Bowser established the Marijuana Private Club Task Force in April 2016, charging its members to convene for 120 days, and make recommendations as to whether marijuana private clubs should be permitted in the District of Columbia. If so, the Task Force was also asked to propose a regulatory structure for such clubs that would best serve to protect the health, safety and well-being of the residents and visitors of the District.

Members of the Taskforce include the following District Leaders:

- Chair, LaQuandra S. Nesbitt, MD, MPH; Director of the Department of Health;
- Kelly O’Meara, Director of Strategic Change, Metropolitan Police Department;
- Helder Gil, Legislative and Policy Advisor, Office of the City Administrator;
- Lori Parris, Deputy Director, Department of Consumer and Regulatory Affairs;
- Fred Moosally, Director, Alcoholic Beverage Regulation Administration;
- The Honorable Brianne Nadeau, Councilmember, Ward 1;
- The Honorable Brandon Todd, Councilmember, Ward 4; and
- Maureen Zaniel, Senior Assistant Attorney General, Office of the Attorney General for the District of Columbia.

### **III. Charge to the Marijuana Private Club Task Force:**

The Charge of the Marijuana Private Club Task Force<sup>1</sup> as outlined in Mayor’s Order 2016-032 follows:

“The Task Force shall provide a report making recommendations regarding the potential licensing and operation of venues at which marijuana may be consumed that are within the lawful parameters for the possession, use, and transfer of marijuana set forth in section 401(a) (l) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-904.01(a) (1)).”

“If the Task Force recommends future protocols authorizing the licensing and operation of such venues, the report shall include recommendations regarding effective ways to regulate those venues to ensure the health and safety of staff members, and invitees and the health and safety of the nearby public and the general public, including recommendations regarding the following specific topics:

1. Hours of operation;
2. Occupancy limits;
3. Whether food or beverages (alcoholic and non-alcoholic) may be sold at the venue;

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<sup>1</sup> The Marijuana Private Club Task Force was established pursuant to section 2(b) of the Marijuana Possession Decriminalization Clarification Temporary Amendment Act of 2016 (D.C. Law 21-0098) effective April 6, 2016.

4. The District agencies that should be involved in regulating the venues;
5. Security plans;
6. The amount of marijuana an individual shall be permitted to possess at the venue;
7. Whether a venue can store marijuana for a member or invitee of a venue;
8. Penalties for violating the regulations;
9. Licensing, including the requirements for licensure, such as proof of compliance with all applicable District laws, and the application procedure, and fee structure;
10. Cost of membership or admission;
11. Limits on the location and number of venues allowed to operate in the District; and
12. How all District residents can utilize the benefits of the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014, effective February 26, 2015 (D.C. Law 20-153; 62 DCR 880).

C. The report may also include:

1. Recommendations for civil and criminal sanctions that may be imposed for violations of laws regulating marijuana usage in a private club;
2. Recommended amendments to Chapter 28 of Title 47 of the District of Columbia Official Code that allow the Mayor to revoke any license, certificate of occupancy, or permit held by an entity that knowingly permits a violation of section 301(a) of the Marijuana Possession Decriminalization Amendment Act of 2014, effective March 31, 2014 (D.C. Law 20-305; D.C. Code § 16-2301(7)); and
3. Any other recommendations the Task Force considers appropriate.

#### **IV. Review of Current District of Columbia Marijuana Laws and Policy**

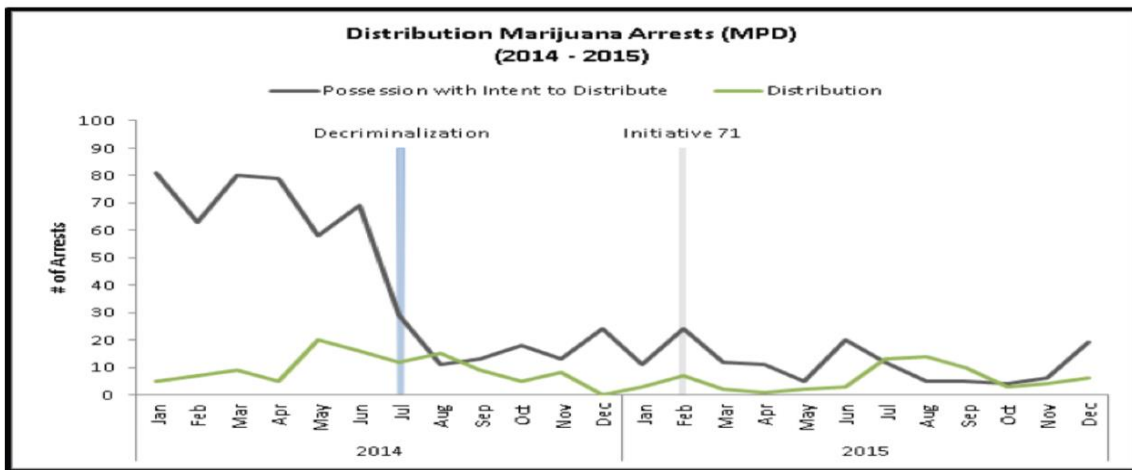
a) Initiative 71

Marijuana was classified as a Schedule I drug in 1970, along with heroin and LSD. This category is defined as “drugs with no current accepted medical use and a high potential for abuse.”<sup>2</sup>

Within the past decade, nationwide policies on marijuana have gone through many transformations. In the District of Columbia, possession of less than one ounce of the substance was decriminalized through the Simple Possession of Small Quantities of Marijuana Decriminalization Amendment Act. This act was signed into law by former Mayor Vincent C. Gray in July of 2014, and reduced the penalty for possession of an ounce of marijuana from up to a year in prison to a civil fine of \$25. After this change in the law, the average number of marijuana arrests dropped from 15 per day to just over one per day as shown in the chart below.<sup>3</sup>

**IMPACT OF INITIATIVE 71 ON ARREST TRENDS**

**Arrests for Possession & Arrests for Distribution of Marijuana**



Source: Initiative 71 Marijuana Working group Status Report, February 2016

In 2014, the District residents voted in favor of significant changes to the District’s policy on marijuana. The voter-approved initiative, titled “the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative,” also known as Initiative 71, legalized the recreational use of the drug. That law provides that individuals over the age of 21 may:

- “Possess two ounces or less of marijuana;

<sup>2</sup> Sewell, R., Poling, J., & Sofuoglu, M. (2010, May 1).

<sup>3</sup> Office of the State Superintendent of Education and the Addiction Prevention Recovery Administration of the Department of Behavioral Health. (2013). District of Columbia Youth Risk Behavior Survey 2012. Retrieved June 30, 2015, from [http:// osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2012 DC YRBS\\_OSSE\\_0.pdf](http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2012 DC YRBS_OSSE_0.pdf)



- Transfer one ounce or less of marijuana to another person who is at least 21 years old, as long as there is no payment made or any other type of exchange of goods or services;
- Cultivate within their residence up to six marijuana plants, no more than three of which are mature;
- Possess marijuana-related drug paraphernalia – such as bongs, cigarette rolling papers, and cigar wrappers – that is associated with one ounce or less of marijuana; or
- Use marijuana on private property.”<sup>4</sup>

The law also sets limitations on marijuana use. For example, it is illegal for individuals under the age of 21 to use or possess marijuana. It is also illegal to operate a car or boat under the influence of marijuana. Unlike states such as Colorado, Washington, and Oregon, the District operates on a “home grow, home use” policy for recreational marijuana as opposed to creating state-regulated marijuana dispensaries. Despite the District’s policy, marijuana is still illegal federally. This means that regardless of one’s age, federal law enforcement with concurrent jurisdiction in the District (e.g., United States Park Police) can make arrests under federal marijuana laws anywhere in the city. <sup>5</sup>

#### b) Limitations on Marijuana Legislation

On December 3, 2014, the District’s Board of Elections certified the results of the election for Initiative 71. Thirteen days later, Congress passed Section 809 of the Financial Services and General Government Appropriations Act, 2015, which is often referred to as “the Rider.” The Rider prohibited the District from using federal or local funds to enact measures legalizing or reducing the penalties for the use, possession, or sale of recreational marijuana. Because Initiative 71 was enacted prior to the Rider becoming law, the Attorney General has determined that the Rider’s provisions do not invalidate Initiative 71. The Rider does, however, prohibit the District from, among other things, passing new legislation that would create a comprehensive scheme for licensing and regulating the cultivation, manufacture, retail sale, and taxation of recreational marijuana. The OAG concluded the Rider prohibits the Council or its staff from conducting a hearing on any such bills. The Rider referred only to funds appropriated in fiscal year 2015. However, Congress passed another rider that imposed the same limitations on the use of funds appropriated in fiscal year 2016. *See* Memo from the Office of the Attorney General Re Legality of Hearings on Bill 21-23, the Marijuana Legalization and regulation Act of 2015.

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<sup>4</sup> Metropolitan Police Department. The Facts on DC Marijuana Laws. Retrieved June 22, 2015, from <http://mpdc.dc.gov/marijuana>

<sup>5</sup> District of Columbia Office of Planning. February 22, 2016.

### c) The Medical Marijuana Program

In 2010, the District introduced the Legalization of Marijuana for Medical Treatment Amendment Act.<sup>6</sup> To qualify to receive medical marijuana under the terms of this Act, an individual must be living with “any condition for which treatment with medical marijuana would be beneficial as determined by the patient’s physician.”<sup>7</sup> In addition, patients must be residents of the District and must submit a complete application to the Department of Health, along with their physician’s recommendation.<sup>8</sup>

Patients with approved applications are required to choose a dispensary from which to receive their dosage. These dispensaries are for medical marijuana patient use only, with each patient currently eligible to receive up to two ounces of marijuana per thirty days.<sup>9</sup>

### d) Recent and Pending Legislation

Legislation has been recently enacted to allow cultivation centers in the District to expand from their existing centers into adjacent empty spaces to allow an increase in plant count from 500 to 1,000 plants and to allow certain cultivation centers to relocate within the same electoral ward. Additionally, legislation is pending to allow patients registered with another jurisdiction’s medical marijuana program to acquire medical marijuana in the District of Columbia and to remove the limitation on the number of plants that each cultivation center may grow. This legislation could result in major changes to the Medical Marijuana Program.

There is additional pending legislation to give the Department of Health the authority to establish independent testing laboratories, that are not owned or operated by any officers or employees of a cultivation center or dispensary, to test

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<sup>6</sup> The Legalization of Marijuana for Medical Treatment Act. (2010). Retrieved June 30, 2015, from [http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Legal-Marijuana-Med-Treat-Amend-Act-2010\\_0.pdf](http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Legal-Marijuana-Med-Treat-Amend-Act-2010_0.pdf)

<sup>7</sup> District of Columbia Department of Health. (2015, March 1). Medical Marijuana Program Physician Frequently Asked Questions. Retrieved July 23, 2015, from [http://doh.dc.gov/sites/default/files/dc/sites/DOH/publication/attachments/120430FAQPhysicians\\_Final\\_0\\_0.pdf](http://doh.dc.gov/sites/default/files/dc/sites/DOH/publication/attachments/120430FAQPhysicians_Final_0_0.pdf)

<sup>8</sup> District of Columbia Department of Health. (2013, May 1). Medical Marijuana Program Patient Frequently Asked Questions. Retrieved July 23, 2015, from <http://doh.dc.gov/sites/default/files/dc/sites/cal-endar/publication/attachments/PatientFAQ.pdf>

<sup>9</sup> Hendrix, S. (2015, April 4). A D.C. doctor makes medical marijuana a specialty. Retrieved June 30, 2015, from [http://www.washingtonpost.com/local/a-dc-doctor-makes-medical-marijuana-a-specialty/2015/04/04/56dd433e-c6a7-11e4-aa1a-86135599fb0f\\_story.html](http://www.washingtonpost.com/local/a-dc-doctor-makes-medical-marijuana-a-specialty/2015/04/04/56dd433e-c6a7-11e4-aa1a-86135599fb0f_story.html)

medical marijuana and medical marijuana derived products to include testing results for the concentration of THC and cannabidiol, the presence and identification of molds and fungus, and other information as required by the Department.

#### **IV. Role of District Agencies and the Impact of Current Laws and Policy on the District of Columbia Landscape**

##### a) Alcoholic Beverage Regulation Administration (ABRA)

ABRA's role has been focused in the following two areas:

- i. Educating alcohol licensees that current DC laws do not permit them to rent or otherwise make their facilities available for patrons to smoke marijuana. This includes a restriction on renting out their facilities to functions that are not open to the public.
- ii. Informing establishments and their patrons that smoking marijuana within ABRA licensed establishments is currently prohibited in the District.

##### b) Metropolitan Police Department (MPD)

Once the laws related to the recreational use and possession of marijuana became effective in the District of Columbia, the Metropolitan Police Department worked to educate the public about the key changes in the law through several mechanisms. All members of the Department were trained on the new law to ensure that it would be appropriately applied and enforced, and that officers could be a resource to the public.

In addition to distributing the Administration's fact sheets online, at MPD stations, and in community meetings, officers had small information cards to share with the public while on their beat. MPD members conducted briefings at community meetings, and with key individuals and groups who could further disseminate information, such as staff of the Council of the District of Columbia, the Council of Business Improvement Districts, and the media.

Arrests related to marijuana have changed dramatically after the two effective dates as police enforcement changed in accordance with the new law. Arrests for possession of marijuana plummeted after decriminalization, and therefore little change was seen after Initiative 71. At the same time, Public Consumption of Marijuana first became a unique criminal offense in July 2014. Public

consumption of marijuana is still a concern in the community. Community members have expressed some frustration because police can only arrest for this offense if they witness the consumption.

The new marijuana laws also changed the standards for evidence for the crimes of distributing, or possessing with intent to distribute, marijuana. Therefore arrests for these charges declined after the law was changed.

c) Department of Consumer and Regulatory Affairs (DCRA)

DCRA's role has been to assist District government agencies, such as the Department of Health and the MPD, with any type of regulatory investigations and enforcement actions relating to business activities involving marijuana use.

Since the inception of Initiative 71, DCRA has investigated numerous business entities and individuals that were operating in gray areas. Examples of the gray areas are:

- i. A business entity created as a delivery service that allowed customers to purchase fresh pressed juices and as a "gift" with their purchase, they received marijuana.
- ii. Operation of an illegal nightclub/event space with the stated purpose of marijuana advocacy. During the event, public consumption of marijuana occurred.
- iii. "Cannabis Happy Hour" events. A licensed club allowing the public consumption of marijuana on its premises sponsored and/or organized by a third party marijuana advocacy group.
- iv. Unlicensed outdoor marijuana special event publicized as an advocacy event to support the legalization of marijuana.

In order to have a successful private club allowance for marijuana consumption or transfer (not for money), regulations must be clear and concise to avoid the gray areas discussed above. The gray areas above demonstrate creativity, in the application and interpretation of,

- i. Distribution of marijuana;
- ii. Sales of marijuana;
- iii. Donations used to support the legalization and the public consumption of marijuana;
- iv. The definition of public vs. private memberships and its impact on public consumption; and
- v. Unauthorized public consumption.

d) Department of Health (DOH)

DOH has the responsibility of administering the D.C. Medical Marijuana Program. As of August 17, 2016, there were 3,981 patients registered in the Program (0.6% of the District population); 311 physicians registered with the Program; 5 dispensaries and 7 cultivation centers.

In 2014, DC enacted a law that allowed DC residents, with bona fide physician-patient relationships, access to the Program once recommended by their physician. In the past access was based solely upon a restricted set of qualifying medical conditions. This change produced a surge of participation in the Program (a 100% increase within the past two years) and an increase in the use of expeditors, who are being paid by patients to complete and submit their applications on their behalf.

Edible marijuana products (medibles) may only be made in cultivation centers that are also licensed food retail establishments and operate a commercial kitchen. Establishments that do not meet these criteria cannot legally produce medibles, even if the marijuana is provided by patrons. DOH has been working to educate individuals and businesses about these laws. Thus far, no crimes have been associated with marijuana cultivation centers and dispensaries.

e) Office of the Attorney General for the District of Columbia ( OAG)

The Attorney General for the District of Columbia is the chief legal officer of the District and is responsible for advising the Mayor, Council, and District agencies in matters related to District law. As an independent office, the Office of the Attorney General (OAG) is also charged with protecting the public interest. With respect to the District's marijuana laws, OAG is responsible for providing advice regarding the legalization, regulation, and sale of marijuana. Pursuant to its public interest mandate, OAG may opine on the development of policy as it relates to marijuana. Finally, OAG defends the District in litigation challenging the District's marijuana laws, represents the District in any necessary enforcement actions, and prosecutes certain violations of the District's marijuana laws.

One enforcement action handled by OAG involved Kush Gods, a business selling marijuana edibles and marijuana in the District from vehicles adorned with marijuana signage and logos. In December 2015, the Metropolitan Police Department set up a sting to buy from the vehicles in the District and arrested the business's owner. MPD seized three vehicles and requested that the vehicles be held for forfeiture, an action handled by OAG. The criminal prosecution was handled by the United States Attorney's Office and the owner pled guilty to

selling marijuana. As part of his plea, the owner agreed to conditions that barred his vehicles from being in the District if any signage or logos concerning marijuana appeared on the vehicles. Kush Gods was effectively terminated as a business and forfeited \$1,532 in currency seized at the time of the arrest.

f) Council of the District of Columbia (DC Council)

Councilmembers Nadeau and Todd were appointed to the Task Force through R21-471, the “Marijuana Private Club Task Force Brianne Nadeau and Brandon Todd Appointment Resolution of 2016,” introduced on March 15, 2016 and effective May 3, 2016. The Task Force itself was established pursuant to Section 2 of the Marijuana Possession Decriminalization Clarification Temporary Amendment Act of 2016 and Mayor’s Order 2016-032.

On April 19, 2016, Councilmember Nadeau convened a town hall to discuss B21-107, the “Marijuana Decriminalization Clarification Amendment Act of 2015”. The bill clarifies that private clubs, or any places to which the public is invited, are prohibited from offering marijuana to patrons. Further, the bill prohibits marijuana consumption in private clubs as well as public spaces. It also authorizes the Mayor to revoke any license, Certificate of Occupancy, or permit held by an entity that knowingly permits a violation. It should be noted that a public hearing on the bill previously took place in December 2015, but with new developments, Councilmembers Nadeau and Todd felt it important to engage the community further.

Councilmember Nadeau began the town hall by highlighting that, despite budget autonomy, Congress is allowed the opportunity to insert its own language that may run contrary to the Council and District residents. The Councilmember highlighted: 1) the congressional rider that prevents the District from reducing penalties related to marijuana or carrying out any law, rule, or regulation for that purpose and 2) the Mayor’s ban on private clubs and the Council’s subsequent vote to extend the ban.

The 17 witnesses at the hearing included advocates, medical marijuana patients, one of the authors of Initiative 71, and a retired CIA analyst. All testified against the ban. Concerns from witnesses ranged from the contribution to racial disparities and the disproportionate effect on those in public housing to the argument that it is disingenuous to legalize marijuana yet provide no space for its use.

## **VI. Data on Marijuana Use in the District of Columbia**

A review of marijuana use in the District, obtained through the Youth Risk Behavior Surveillance System (YRBSS) and the Behavioral Risk Factors Surveillance System (BRFSS) for the period of 2011-2013, revealed the following trends:

- Men reported higher rates of use than women;
- African Americans reported higher rates of use than other racial and ethnic groups;
- The 18-24 age group reported the highest rates of use and rates decline as age increases;
- For peak users, annual income was less than \$15,000;
- Wards 5 and 7 report the highest rates of use;
- Although 53.8% of the D.C. population has smoked marijuana at some point in their life, 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, behind only alcohol. This data includes incidents where multiple metabolites were found in one individual. Data for non-fatal traffic incidents cannot be obtained because MPD does not currently screen for other metabolites in such cases if the driver screens positive for alcohol.

Data regarding treatment services provided to marijuana users was gathered by the Department of Behavioral Health's Addiction, Prevention and Recovery Administration. This data only includes individuals who were assessed for treatment services through the public treatment system and report marijuana as their primary or secondary drug of choice. A portion of this data could be the result of court-ordered treatment, and these orders 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 influencing this trend could be the disproportionate share of racial and ethnic minorities who are publicly-insured. Most of the individuals in this data set live in Ward 8.

Through data gathered about D.C. marijuana use among adolescents it was found that:

- Only 11% of D.C.'s 11<sup>th</sup> graders believe that using marijuana compromises their long-term health.

- The average age of first marijuana use among middle school students was found to be 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.

## **VII. Defining a Private Club in the District of Columbia**

### a) What is a Private Club under District Licensing Laws?

Currently, the District of Columbia Municipal Regulations (DCMR) defines a private club as a building or facility used or operated by an organization or association where goods, beverages, food and/or services are sold on the premises only to members or their guests.

A private club must be registered with the Internal Revenue Service (IRS). Private clubs do not have a specific category of business license within DCRA regulations. Most private clubs obtain general business, public hall, hotel, or restaurant licenses depending on the business activity. DCRA does not issue a Basic Business License (BBL) for private clubs but issues a BBL for the activities in which a private club may engage, such as charitable solicitations, sales of food, drink, or merchandise.

DCRA regulations specify that private club events are not open to the public and can only be hosted and attended by members and their guests.

The organization running the private club must be a registered nonprofit and have a registered agent in DC but does not have to list its purpose when registering. Sales and revenue must serve the public interest as defined by the IRS.

### ABRA Liquor Licensing Requirements

ABRA currently licenses 24 non-profit establishments as private clubs. Title 25 of the DC Official Code currently requires private clubs to be non-profit corporations. Title 25 does not permit the issuance of private club licenses to entities in residential zones. An owner of a private club is required to be 21 years of age or older.

Pursuant to ABRA regulations private club events are not open to the public and can only be hosted and attended by members and their guests. ABRA regulations prohibit the issuance of a private club license to a college fraternity or sorority.



Members of private clubs are permitted to store alcoholic beverages inside of lockers maintained on the licensed premises.

Private Club Zoning Regulations OR Zoning considerations.

Under 11 DCMR Chapter B-100<sup>10</sup>, which defines a private club as follows: a building and facilities or premises used or operated by an organization for association for some common avocation purpose such as, but not limited to, a fraternal, social, educational, or recreational purpose; provided, that the organization or association shall be a non-profit corporation and registered with the US Internal Revenue Service; goods, services, food, and beverages shall be sold on premises only to members and their guests; an office space and activities shall be limited to that necessary and customarily incidental to maintaining the membership and financial records of the organization.

Zoning requirements must be met before a business license can be obtained. Zoning restrictions include the admissibility of pop-up clubs, the degree of community notice needed, the establishment of geographic limits to private club concentrations, and whether entities that host public events can also become a private club. Private clubs are a matter-of-right use in all zones except R1, R2, R3, W-O, SEFC/R-5D, SEFC/R-5E, and SSH Overlay. Under the new zoning regulations, a private club is not allowed in an RF zone (currently the R4 zone).

The private club must have a Certificate of Occupancy (CofO) prior to occupancy. An applicant applying for a CofO for a private club must provide copies of its nonprofit organization registration status and IRS registration. Currently, the DCMR does not define a required minimum length of time for a membership.

***Recommendation:***

The Task Force recommends that Marijuana Private Clubs be required to obtain a business license under a new category specific to marijuana private clubs to be created by the Department of Consumer and Regulatory Affairs. This new category is necessary to require the owners of the establishment to disclose the nature of their business activities to ensure compliance with all other regulations that will be specific to a marijuana private club. A BBL will not ensure such compliance.

Many members of the Task Force agreed that marijuana private clubs should not be allowed to locate in a residential zone. For comparison, under ABRA's regulations, permanent licenses cannot be issued to entities in residential zones.

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<sup>10</sup> The new zoning regulations become effective September 6, 2016.

The permanent private clubs could likely be located in a commercial zone or an industrial manufacturing zone. As a precedent, private clubs licensed by ABRA must be located in a commercially zoned location.

b) Potential Legal Conflicts of Federal and Local Law for Non-Profit Designation

The Task Force members discussed potential legal issues that might arise from the Federal 501(c)3 requirements and Initiative 71. Because marijuana is a Class 1 drug and the Federal government has not taken any steps to legalize or decriminalize it; it is unclear if a Marijuana Private Club could maintain its Federal non-profit status if the source of their funds were connected to the use of marijuana.

The Task Force also discussed whether the District should consider adopting the federal non-profit requirements locally as part of the licensing process to address the issues identified above.

The Task Force discussed additional considerations regarding marijuana uses that are in compliance with Initiative 71. Since marijuana sales are prohibited, private clubs could not sell marijuana. Income earned from a private club from any source would be reported to the IRS and the District of Columbia Office of Tax and Revenue as income.

***Recommendation:***

It is recommended that federal non-profit requirements for private marijuana clubs be thoroughly evaluated prior to a decision being rendered.

However, under District law, private clubs may sell drug paraphernalia legally because these products would only be used with two ounces of marijuana or less. It is also recommended that additional consideration should be taken to determine whether trading and bartering marijuana, in any form, is compliant with Initiative 71.

c) Temporary vs. permanent establishments

DCRA and ABRA have different temporary licensing requirements. ABRA issues temporary liquor licenses; however, DCRA does not issue temporary business licenses. Therefore, to allow a private club pursuant to a temporary business license, the regulations must be amended.

If temporary private clubs are allowed, the Task Force discussed operating guidelines such as operational hours. The Task Force also considered the possibility of “pop-up private clubs” which provide one-day to three-day

memberships and may “rove” to different locations when offering these limited memberships. However, DCRA business licenses are location specific. Therefore, the regulations would have to be amended to allow for “pop-up private clubs.” This could be addressed if these “pop-up private clubs” were considered special events, and thus, required to obtain a special events license. The Task Force agreed that the pop-up private clubs would be expected to provide notice of their intentions to residents, the Advisory Neighborhood Commissioners (ANC), and local associations of the communities where they plan to locate. In addition, there are a number of other requirements that the pop-up clubs would be expected to meet (e.g., with regard to security and ventilation).

***Recommendation:***

The numerous requirements that pop-up private clubs would be expected to meet before they could be permitted clearly indicates that these clubs must be planned weeks or months in advance of their opening. In addition, some Task Force members voiced concern that the regulation of pop-ups may present a very heavy burden on the agencies that have regulatory oversight of the business activities. As such, temporary establishments should not be permitted initially if at all.

Another consideration that was raised is the possibility that IRS rules might not permit a nonprofit organization to offer transient memberships.

d) Requirements for ownership and employment

The model used by the Task Force for the discussion of ownership of a private club was DCMR § 22-5400, which defines the general qualifications for all applicants for a license to operate a medical marijuana cultivation or dispensing center.

***Recommendation:***

The Task Force members accepted the first several items in DCMR§22-5400, specifically that the applicant be of good character, be generally fit for responsibility for licensure or registration; be at least 21 years of age; cannot have been convicted of a felony within the last ten years; must pass a criminal background check; must not be a physician; must have a “business license” (as defined by DCRA); and must have completed a management training course. The criteria for employees of a private club should include the requirements that they be at least 21 years of age; cannot have been convicted of a felony within the past ten years; and must pass a criminal background check.

e) How is membership defined?

The Task Force members did not support the indiscriminate use of one day memberships to the clubs. There was also consensus that the private club owners should be given the flexibility to determine the fee structures for their clubs on a basis to be, at a minimum, monthly, and have a role in defining the nature of their club's membership given the number of regulations and requirements owners and operators of marijuana private clubs will be required to adhere to.

***Recommendation:***

The Task Force agreed that membership in the private clubs should be limited to District residents at this time. There was also agreement that the term of the memberships should be defined (e.g., monthly, quarterly, annually). However, there was a consensus that individuals may join more than one club; clubs should maintain a registry of daily attendance for each day that they are open; that the clubs require a list of guests 24 hours in advance for special events; and that there be a limit to the number of individuals utilizing the club's facilities at any one time. The issue was discussed of having "attendants" in the clubs who could monitor the state of intoxication of the club's patrons and restrain those intoxicated individuals from consuming more marijuana.

f) What activities shall be permitted in a marijuana private club?

Private clubs in the District provide a number of programs and services to its members and the expectation is that marijuana private clubs would be no different. In that regard, the Task Force deliberated the types of services and activities that would be permissible within a private club. Of note, the sale of marijuana, including remuneration of any kind, remains illegal in the District of Columbia.

The Task Force recommended that marijuana private clubs not be permitted to sell, serve or permit the consumption of alcoholic beverages in licensed premises. DOH supports this recommendation for public health and safety reasons given that marijuana users report higher rates of binge drinking than non-marijuana users in the District. Additionally, the Task Force recommended that marijuana private clubs be permitted to sell and serve non-marijuana infused food and beverage. However, the question as to whether club members could bring their own marijuana-infused food and beverage products remained unanswered due to the difficulty of being able to officially quantify that the one ounce transfer rule is being met.

The Task Force agreed that marijuana could be stored with an appropriate security plan. This specific recommendation is designed to address the concern that residents of public housing and residents dwelling in certain rental properties are not permitted to possess or consume marijuana in their homes. The Medical Marijuana Program provides examples of security plans that can be replicated for establishments that have marijuana on the premises 24/7.

The Task Force also agreed that members should be permitted to host events for their guests with advance notice; however, these events should not be held at a cost for attendance (cover charge) to resemble night clubs or for profit activities for the non-establishment host in any way. The Task Force also agreed that occupancy limits, as defined in DCRA regulations, would need to be adhered to.

g) Agencies with a role in licensure and enforcement of private clubs

The agencies with a definite role in licensure and enforcement of private clubs were identified as the following: Alcoholic Beverage Regulation Administration, Department of Consumer and Regulatory Affairs, Department of Health, Metropolitan Police Department and the Office of the Attorney General.

h) Other Considerations

The District government is committed to supporting activities that make DC a thriving and energetic city. At the same time, public safety must be ensured at these activities. The Task Force determined that while they do not and cannot know at this time, it is conceivable that private marijuana clubs may increase the general risk to public safety, much like business establishments whose primary means of revenue is the sale of alcohol for on-premises consumption. In the District, these establishments are able to work through the Metropolitan Police Department to hire “reimbursable details,” which are officers working overtime around the place of business to ensure the safety of patrons arriving at and leaving the establishment. Pursuant to District law, reimbursable details are staffed with officers who are working overtime and would not otherwise be on duty at the time of the reimbursable detail. (DC Official Code §25-798(c)) Thus, if an establishment requests a reimbursable detail, the officers work for MPD on public space, and not directly for or in an establishment, avoiding a potential conflict of interest for officers who might need to take enforcement action again an establishment.

***Recommendation***

The Task Force recommends that if the private marijuana clubs are ever authorized under District law, they should be able to hire officers through

reimbursable details if extra support for public safety in and around these establishments is needed.

### **VIII. Review of Private Clubs in other Jurisdictions**

The recreational use of marijuana has been legalized in Alaska, Colorado, Oregon, and Washington.<sup>11</sup> None of these jurisdictions have authorized open and public consumption of marijuana. However, Alaska has passed legislation that will allow consumption in retail marijuana stores that obtain a consumption permit. Similarly, Oregon has recently proposed legislation to allow cities, towns, and counties to choose whether to license and regulate locations where consumption of marijuana would be permitted on the premises, within their jurisdictions.

These states have begun enacting laws and emergency regulations to address underground clubs that have operated with the view that the law is unclear or “gray” with respect to private clubs. These new laws make clear that consumption in private clubs is prohibited, typically citing clean air laws, or to a broad definition of “public place” as the basis for the prohibition.

In general, states do not permit open and public consumption due to clean air laws and concerns about exposure to second-hand smoke.

Below is a discussion of the states’ public consumption laws

#### **Alaska**

Public consumption is illegal. It is punishable by a fine of up to \$100.00.<sup>12</sup> Though Alaska’s law expressly made it unlawful to consume marijuana in public,<sup>13</sup> it did not define the term “in public.” Therefore, the state filed emergency regulations on February 24, 2015, to define “in public” as, “a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, businesses, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.” However, Alaska subsequently amended the law to allow consumption of marijuana and marijuana products purchased on the premises in designated areas on premises of a licensed marijuana retailer.<sup>14</sup> This

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<sup>11</sup> The District of Columbia has decriminalized the possession of minimal amounts of marijuana and allows residents to possess and grow minimal amounts of marijuana and cannabis plants for personal use in their private residences. However, the District of Columbia, unlike the states of Alaska, Colorado, Oregon, and Washington, does not allow retail sales of non-medical marijuana. See, D.C. Official Code § 48-1201; and D.C. Official Code § 48-904.01. (2012 Repl.).

<sup>12</sup> NORML.org Alaska Laws & Penalties.

<sup>13</sup> Alaska Emergency Regulations re: definition of “in public” (3 AAC 304.990), 2/24/2015.

<sup>14</sup> Alaska Administrative Code Title 3, Section 306.305(a) (4).

provision became effective February 21, 2016. The regulations do not permit a retail marijuana store to give a customer alcoholic beverages, whether free or for compensation, or free marijuana or marijuana products, including samples.<sup>15</sup> Presently, no consumption endorsements have been issued. Therefore, at present, it continues to be a violation to consume marijuana in a public place, including unlicensed, unregulated marijuana smoking clubs.<sup>16</sup>

## **Colorado**

State law prohibits public consumption.<sup>17</sup> Licensees (which are any person/business entity licensed pursuant to the Retail Code) are prohibited from allowing consumption of marijuana or marijuana products on their premises.<sup>18</sup> Further, under Colorado's Clean Indoor Air Act, marijuana smoking isn't allowed anywhere that cigarette smoking is also banned and there is not a cigar bar-style exemption.<sup>19</sup>

However, at the local level, some jurisdictions, such as Pueblo County, Colorado, have undertaken efforts to allow the operation of private marijuana clubs. The Pueblo County commissioners approved changes to the county's marijuana laws regarding private marijuana clubs. These rules allow consumption of marijuana on premises open to the public if the premise:

- Is limited to persons age twenty-one and older;
- Is clearly marked as a place where marijuana is being consumed;
- Complies with the Colorado Clean Indoor Air and the Pueblo County Smoke Free Air Acts;
- No alcohol is served on the premises unless the premise is properly licensed under a permitted category;
- The consumption of marijuana is not done openly and publicly; and
- The premise otherwise complies with the provisions of the Pueblo County Zoning Code<sup>20</sup>.

Denver has proposed “The Responsible Use Denver Initiative Ordinance”, that would provide an exception to the term “public place.” The provision would allow “any portion of a premise where the consumption of marijuana is permitted in a Private Marijuana Social Club or in a premises or property that is hosting a Special Event...” not to be

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<sup>15</sup> Alaska Administrative Code Title 3, Section 306.310(b) (3).

<sup>16</sup> Alaska Alcohol & Marijuana Control Office Marijuana Initiative FAQs.

<sup>17</sup> Section 16(3) (d) of Article XVIII of the Constitution of the State of Colorado.

<sup>18</sup> Code of Colorado Regulations, Section 212-2.

<sup>19</sup> Colorado Revised Statutes Section 25-14-204.

<sup>20</sup> Section 5.12.140 of the Pueblo County Code.

considered a public place.<sup>21</sup> If passed, this change would make smoking clubs legal in Denver, but would still not permit them statewide.

## **Oregon**

Public consumption is banned. Oregon law does not allow for on-site consumption of marijuana at dispensaries.<sup>2223</sup> The legislature recently passed House Bill 2546, effective as of January 2016, which amended Oregon’s Clear Air Act to prohibit a person from smoking, aerosolizing or vaporizing an inhalant or from carrying a lighted smoking instrument in a public place or place of employment.<sup>24</sup> House Bill 2546 further prohibits this conduct within ten (10) feet of the entrance, exit, windows, and ventilation intakes of a public place or place of employment.

House Bill 2546 defines a “public place” as an enclosed area open to the public and defines “inhalant” to include a cannabinoid or any other substance that is inhaled for the purpose of delivering cannabinoids into a person’s respiratory system. A civil penalty of up to \$500.00 per day for each violation may be imposed for violating this law.<sup>25</sup>

House Bill 2546, however, exempts medical marijuana use in a medical facility. Additionally, House Bill 2546 allows the owner of a hotel to designate up to 25% of the sleeping rooms as rooms in which the smoking, aerosolizing or vaporizing of inhalants is permitted.<sup>26</sup>

It is unclear whether private clubs can still operate if they only allow customers to consume marijuana in edible form. However, at present, edibles are not available for retail sale in Oregon.<sup>27</sup>

## **Washington**

Public consumption is illegal. Washington’s law, which resulted from Initiative Measure No. 502, states, “It is unlawful to open a package containing marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, or consume marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates, in view of the general public or in a public place.”<sup>28</sup>

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<sup>21</sup> The Responsible Use Denver Initiative Ordinance.

<sup>22</sup> Oregon Legalized Marijuana Initiative, Measure 91 (2014), section 54.

<sup>23</sup> [www.oregon.gov](http://www.oregon.gov) Oregon Liquor Control Commission’s Frequently Asked Questions.

<sup>24</sup> Sections 15 and 16 of House Bill 2546 of the 78<sup>th</sup> Oregon Legislative Assembly, 2015 Regular Session.

<sup>25</sup> Section 19 of House Bill 2546 of the 78<sup>th</sup> Oregon Legislative Assembly, 2015 Regular Session.

<sup>26</sup> Section 18 of House Bill 2546 of the 78<sup>th</sup> Oregon Legislative Assembly, 2015 Regular Session.

<sup>27</sup> [www.oregon.gov](http://www.oregon.gov) Oregon Liquor Control Commission’s Frequently Asked Questions.

<sup>28</sup> Washington State Initiative Measure No. 502, Section 21.



Though Initiative Measure No. 502 did not define “public place,” this term is defined in the state code as, “that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.”<sup>29</sup>

Washington state law specifically prohibits a person from conducting or maintaining a marijuana club. The law states, “It is unlawful for any person to conduct or maintain a marijuana club by himself or herself or by associating with others, or in any manner aid, assist, or abet in conducting or maintaining a club.”<sup>30</sup> However, new legislation to amend this law, Senate Bill 6375, was proposed in January 2016.<sup>31</sup> Senate Bill 6375 would allow cities, towns, and counties to license and regulate marijuana use locations within their jurisdictions where consumption of marijuana would be permitted. If enacted, this bill would prohibit the entry of persons under 21 from these locations.

Efforts are underway in Seattle to propose legislation to license and regulate “marijuana use lounges.” These lounges would permit customers to vaporize or eat marijuana, be open to customers 21 and older with mandatory ID checks, prohibit alcohol, and have minimum ventilation requirements. However, since state law does not allow consumption of marijuana where it is sold, customers would have to bring their own marijuana to the lounges. If enacted, the lounges could charge an entrance fee, and sell food and nonalcoholic beverages.<sup>32</sup>

## **IX. Taxation and Regulation of Non-Medical Marijuana Sales**

In a separate forum, current owners of the District of Columbia’s Medical Marijuana Cultivation Centers and Dispensaries expressed concerns that the establishment of marijuana private clubs in the District of Columbia could lead to a further proliferation of marijuana sales in the unregulated “gray market”. In light of these concerns, the Task Force extended its mandated convening beyond the original 120 days to hold a session to discuss options for a tax and regulation regime in the District of Columbia that would close gaps that exist between the Medical Marijuana Program and Initiative 71.

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<sup>29</sup> Revised Code of Washington 70.160.020(2).

<sup>30</sup> Revised Code of Washington 69.50.465.

<sup>31</sup> State of Washington Senate Bill 6375, 64<sup>th</sup> Legislature, 2016 Regular Session.

<sup>32</sup> Moving Marijuana Policy Forward Memo, January 4, 2015.

a) Office of the Deputy Mayor for Public Safety and Justice

The mission of the Office of the Deputy Mayor for Public Safety and Justice is to provide direction, guidance, support, and coordination to the District's public safety agencies. The Office also provides oversight and support for citywide public safety and justice related policies, activities, and initiatives under its jurisdiction. While the Office is not directly involved in the licensing and regulation of marijuana-related businesses, it has an interest in assessing District laws' impacts on public safety and the criminal justice system. Additionally, the Office supports a regulatory system that is transparent and includes public feedback, can be consistently enforced, and does not create undue burdens on the District's public safety and emergency response agencies. Any regulatory system should include tight controls to ensure that marijuana products are kept away from minors, to prevent criminal enterprises from engaging in commercial sales, and to avoid overconcentration of commercial activities in District communities.

b) Department of Consumer and Regulatory Affairs

DCRA has regulatory authority over business license activities. DCRA's regulatory authority is found in DC Official Code Chapter 47-2801. DCRA is authorized to issue and revoke business licenses

c) Alcoholic Beverage Regulation Administration

ABRA is currently responsible for the regulation of alcoholic beverages. ABRA works with the Office of Tax and Revenue on the collection of certain alcohol taxes. ABRA's current licensing, adjudication, and enforcement processes could be utilized in establishing a tax and regulation system for non-medical marijuana sales. Specifically, ABRA has a licensing system in place where notice of license applications are provided 45 days in advance to ANCs and members of the public. ABRA's current workload would allow it to hear and adjudicate protested license applications as well as enforcement actions brought by the OAG in a timely manner. ABRA Enforcement Division is able to monitor these establishments as ABRA investigators currently work until 4:00 a.m., seven days a week.

If non-medical marijuana sales are permitted, ABRA recommends that these businesses not be permitted to also sell, serve, or permit the consumption of alcoholic beverages on the licensed premises.

d) Office of the Attorney General

The Attorney General supports a comprehensive system for licensing and regulating the cultivation, manufacture and legal retail sale of marijuana with

restrictions prohibiting the sale and marketing of marijuana to minors. Such a system would include the collection of fees, imposition of taxes, and designation of ABRA as the regulatory agency for the program. The Office of the Attorney General stands ready to give legal advice on any program developed.

*See memo from OAG Re Legal Analysis-Effect of Removing Private Club Restrictions (AL-16-186C)*

e) Council of the District of Columbia

The DC Council's initial legislation, Bill 21-0023, the Marijuana Legalization and Regulation Act of 2015, includes language about this framework as well other matters such as proximity to an educational institution attended by children and a limit of one private club per ward. Further highlights of the bill are noted below:

As introduced, the bill legalizes the possession, consumption, display, purchasing, or transporting of marijuana and marijuana infused products for private personal use. Persons must be over 21 years of age and those under 21 shall be subject to a civil infraction.

The limit, as stated in the bill, is 2 ounces or less of dried marijuana and marijuana infused products, or 5 grams or less of hashish. The bill restricts consumption of marijuana in public. It amends current applicable laws to decriminalize certain amounts of marijuana, marijuana infused products, as well as marijuana related paraphernalia.

The bill establishes the licensing and regulation infrastructure for the marijuana retail industry and establishes a dedicated marijuana fund. It designates that the Alcoholic Beverage Regulation Administration shall receive all income from taxes, licensing fees, penalties, and forfeitures related to the District of Columbia marijuana industry.

The legislation clarifies the applicability of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 and makes adjustments to District of Columbia regulations regarding the legal limit of THC concentration allowed while operating a motor vehicle.

## **X. Next Steps**

The Task Force agreed that there needs to be a safe and responsible space for eligible citizens to consume marijuana. In addition, all members support a tax and regulation scheme for marijuana.

However, marijuana, unlike alcohol, is still an illegal substance and therefore not commercially legal to transact. Creating a club framework therefore presents significant challenges.

Also, the public safety issues/impact from such establishments, and further, the lack of knowledge of what people are actually consuming-pesticides, amount of THC, etc., is not yet understood.

The Task Force concluded that having approached this process objectively, considering all the options, and providing recommendations for regulations and policies that it was premature to advocate for marijuana private clubs at this time. As such, marijuana private clubs are not recommended in the District of Columbia.

**XI. Appendix- Legality of Hearings on Bill 21-23, the Marijuana Legalization and Regulation Act of 2015.**