

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

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TO: Honorable Members of the City Council

FROM: Sharon M. Tso 
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**Analysis of Social Consumption of Cannabis and Driving under the Influence of Cannabis
Regulations in Jurisdictions Where Adult Use of Cannabis is Legal**

Summary

On October 31, 2017, the Council adopted recommendations from the Rules, Elections and Intergovernmental Relations Committee relative to establishing a regulatory framework for commercial cannabis activity, and other cannabis-related issues, in the City of Los Angeles. As part of this action, the Council instructed this office, with the assistance of the City Administrative Officer (CAO) and the Department of Cannabis Regulation (DCR), to report back on the issue of social consumption, providing an analysis of what the State of California allows, the ongoing processes of the States of Colorado, Nevada, Washington and Alaska, as well as the cities of Denver, Seattle, Washington D.C, and San Francisco. This Office was also instructed to include an analysis of how other jurisdictions are addressing the issue of impaired driving or driving under the influence of cannabis and cannabis-related products.

Currently, California law allows for on-site consumption of cannabis at businesses with a retail or cannabis microbusiness license, but only in jurisdictions that have specifically allowed for it. Under California law, these facilities must be restricted to persons 21 years or older, consumption cannot be visible from any public place, and the sale or consumption of alcohol or tobacco cannot be permitted on premises where cannabis is consumed. A number of jurisdictions in the State, including the City and County of San Francisco, the City of Oakland and the City of West Hollywood have enacted or are in the process of enacting rules and regulations governing the social consumption of cannabis at cannabis retail locations. This report provides an overview of social consumption and driving under the influence of cannabis regulations in various jurisdictions across the United States.

This report analyzes the regulations related to social consumption in nine jurisdictions: the states of Alaska, Colorado, Nevada, and Washington; and the Cities of Denver, San Francisco, Washington, D.C. and West Hollywood. This report also analyzes the regulations in these jurisdictions related to driving under the influence of cannabis.

Social Consumption of Cannabis

None of the jurisdictions surveyed as part of this analysis allow for general public consumption of cannabis. Social consumption of cannabis, restricted to locations where individuals are allowed to consume cannabis or cannabis products in a designated area is allowed or under consideration in Alaska, Denver, Nevada, San Francisco and West Hollywood. There are no current regulations for social consumption in Colorado (statewide), Washington State, Seattle, or Washington, D.C.

Alaska

The State of Alaska released draft regulations in August 2017 that would allow licensed retail cannabis stores to sell cannabis and cannabis products to patrons for consumption on the licensed premises. These licenses would be subject to a number of stipulations:

- A cannabis consumption area must be designated and separated from the remainder of the premises, either by being located outdoors, in another building, or be separated with a secure door and a separate ventilation system;
- Sales are limited to one gram of cannabis bud or flower to any one person in a single transaction, 10mg of THC in edible cannabis products to any one person in a single transaction, and food or beverages not containing cannabis or alcohol; and
- Patrons are allowed to remove from the licensed premises cannabis or cannabis product purchased for on-site consumption, provided it is packaged according to other state regulations.

Various restrictions would also be placed on certain activities. These include allowing a person to bring into or consume in the designated cannabis consumption area any cannabis or cannabis product not purchased at the licensed retail cannabis store, allowing tobacco consumption in the cannabis consumption area, and allowing intoxicated persons to enter the cannabis consumption area. Licensees would also be restricted from selling, offering to sell, or delivering an unlimited amount of cannabis during a set period of time for a set price or offering cannabis at a price less than the price regularly charged for cannabis during that same calendar week.

As part of the application process, potential licensees would be required to submit an operating plan that includes the store's plan for security, ventilation, and isolation of the cannabis consumption area from other areas of the store. A cannabis consumption area would also be required to have a smoke-free area where employees could monitor the area.

Nevada

The State of Nevada prohibits the consumption of cannabis in any public place and there are currently no regulations in place for licensing on-site consumption of cannabis. However, in 2017, the Nevada Legislative Counsel Bureau released an opinion stating that businesses may establish and operate a lounge or other facility or special event at which patrons are allowed to consume cannabis in compliance with state law. Moreover, the opinion argued that under current Nevada state law, local governments are not prohibited from enacting ordinances that would establish regulations and restrictions for social consumption of cannabis. Clark County and the City of Las Vegas both briefly considered allowing cannabis lounges after the Nevada Legislative Counsel Bureau released its opinion, but both jurisdictions have elected to delay discussion until a later date.

Colorado

In recent years, cannabis social clubs have opened throughout Colorado. These clubs, where patrons purchase a membership allowing them to consume the club's cannabis in exchange for a donation, operate in a legal grey area. Proposed state legislation which would have authorized cannabis membership club if the local jurisdiction had authorized clubs failed to pass the Colorado legislature in 2017. Under current Colorado state law, local jurisdictions may enact ordinances or regulations governing the time, place, manner and number of cannabis establishment operations. This has allowed cities, particularly Denver, to enact regulations for social consumption.

Denver

In November 2016, voters in the City of Denver approved Initiative 300, which required Denver to create a social consumption pilot program that sunsets on December 31, 2020. Denver began to accept applications for the pilot program in August 2017, and received the first application in December 2017.

Licenses are granted for a cannabis consumption establishment or a special event that allows the licensee to designate part of its premises a Designated Consumption Area (DCA). A DCA is a designated area within the establishment or special event where cannabis consumption is expressly permitted. An applicant may not be issued a special event permit for more than ten days in any one calendar year.

DCA's are restricted within 1,000 feet of the following locations: a school, a childcare facility, an alcohol or drug treatment facility, and a city-owned recreation center. A license for a DCA may also not be granted if the proposed DCA is located in an establishment with a liquor license, a retail or medical cannabis store, or a purely residential zone district.

Only adults 21 and older are allowed inside a DCA, and establishments are required to check identification when patrons enter the DCA. Patrons are not allowed to purchase cannabis at a DCA, but may bring cannabis and consume it in a DCA. Licensees are also required to comply with the Colorado Clean Indoor Air Act.

Applicants may be required to provide proof of neighborhood support or non-opposition from a Registered Neighborhood Organization or Business Improvement District, allowing neighbors to contribute to discussion on DCA license applications. Public hearings are required prior to a license being granted for either an establishment or a special event. Licensees are restricted to advertising in licensed cannabis businesses or in adult print publications. A DCA may not be advertised in any place where the advertisement would be visible to the public from any street, sidewalk, park or other public place.

San Francisco

The City and County of San Francisco has allowed for on-site consumption of cannabis in medical cannabis dispensaries since it passed its Medical Cannabis Act in 2005, but the San Francisco Planning Commission held the power to deny on-site use. Only a handful of dispensaries allowing for on-site consumption currently operate in San Francisco.

In December 2017, San Francisco finalized new regulations for recreational cannabis sales that allow for on-site consumption at medicinal cannabis dispensaries, cannabis retailers, and cannabis microbusinesses. Unlike other jurisdictions, establishments must first secure a permit to operate a cannabis establishment from the San Francisco Office of Cannabis before applying for a permit from the San Francisco Department of Health for on-site consumption permit. San Francisco departments may recommend denial of an application for on-site consumption, even if an establishment has already secured a permit to sell cannabis.

Similar to other jurisdictions, San Francisco requires that the area where consumption of cannabis is allowed to be restricted to persons 21 or older, consumption may not be visible from any public space or non-age restricted area, alcohol or tobacco products may not be sold or consumed on the premises, and the designated smoking room must have a separate ventilation system from the rest of the premises.

West Hollywood

The City of West Hollywood adopted an ordinance allowing for on-site consumption of cannabis in November 2017, and expects to issue the first licenses in 2018. The ordinance establishes two types of licenses for consumption: one that allows for smoking, vaping, and ingesting cannabis, and a second that is limited to edible ingestion only. Consumption areas may sell cannabis products, but those products must be consumed on-site. Licensees may provide a consumer no more than what is allowed for personal possession and use.

The ordinance includes many of the same features found in other regulations, including controls on odor and requirements for ventilation systems; a requirement for the consumption area partitioned off from the rest of the premises; basic security requirements; and limiting locations to areas not viewable from public spaces. It also includes additional features not found in other ordinances. These include requirements for hiring of a neighborhood security guard patrol for a two-block radius surrounding the business during all hours of operation; providing law enforcement and all neighbors within one hundred feet of the business a name and phone number of an on-site community relations employee to contact if there are operational problems; and refusing service to a patron and recommending car services if they are impaired.

Driving Under the Influence of Cannabis

To combat driving under the influence (DUI) of cannabis, jurisdictions have generally focused on enforcement of impairment laws and, more recently, have launched public awareness campaigns. DUI enforcement of cannabis differs from DUI enforcement of alcohol, as there is no standard for accurately measuring cannabis-induced impairment of an individual. Enforcement has therefore relied on observed impairment through field sobriety tests. State and local agencies have also begun public awareness campaigns to highlight the danger of driving while under the influence.

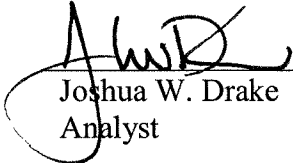
There is no universal impairment standard for drivers under the influence of cannabis, primarily due to difficulties in accurately measuring impairment caused by cannabis. Unlike cannabis, the body begins the process of eliminating alcohol nearly immediately after its entry into the blood system at a fairly constant rate. The blood alcohol content (BAC) of an individual is primarily a product on the rate and amount of alcohol consumed, as the rate of elimination is fairly constant. Moreover, the effect of consuming alcohol on behavior (e.g. behavior, attention, cognition, etc.) is well-correlated with BAC. This correlation has allowed the use of BAC to infer the impairment caused by alcohol consumption and has served as the basis for laws prohibiting driving with high BACs.

There have been recent developments in testing technology that have resulted in some companies offering oral fluid drug screening devices. These tests rely on the driver running a mouth swab around his or her mouth and are capable of detecting up to seven drugs. These devices have been deployed on a limited basis by a number of departments in California, including in the cities of San Diego, Sacramento, and Los Angeles, as well as in a handful of other states. A July 2017 National Highway Transportation Safety Administration report, however, warns that “the accuracy and reliability of these devices has not yet been clearly established.” Research is continuing on solutions to this challenge.

Most of the enforcement of Cannabis laws has relied on police officers recognizing impairment in the field. Detection is primarily through the use of a field sobriety test, but some officers may also receive more advanced training on detecting impairment. This includes training in Advanced Roadside Impaired Driving Enforcement (ARIDE). The ARIDE program trains law enforcement officers to observe, identify,

and articulate the signs of impairment related to drugs, alcohol or a combination of both. Law enforcement agencies may also use Drug Recognition Experts (DRE) to detect impairment in drivers. DREs go through more rigorous training that allows them to determine which specific drug was likely to be the cause of observed impairment. Nationwide, there are approximately 8,000 DREs.

Some states have also begun public awareness campaigns about the dangers of driving high. These include Massachusetts (“Drive Sober or Get Pulled Over”), Colorado (“Driver High and Get a DUI”), and California (“DUI Doesn’t Just Mean Booze”), among others. Outside of government, private organizations have launched campaigns to combat the problem of impaired driving. Campaigns may include a website, toolkit for community-based organizations, billboards, and other materials.



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