

MEMORANDUM

State of Alaska Department of Law

TO: Marijuana Control Board

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FILE NO.: 2019200399

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FROM:

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SUBJECT: Regulation Review: Onsite
Consumption Rekey

This Board adopted its onsite consumption regulations in late 2020. Unfortunately, legal review regarding permissible outdoor smoking at retail stores that are not freestanding has led to significant attention and review. In short, consumption of edibles is permitted in an approved consumption area whether the retail store is freestanding or not freestanding. Smoking of marijuana or marijuana products is permitted in retail stores that satisfy the new definition of freestanding. This includes both indoor and exterior smoking areas. I present the Rekeyed version of these regulations to you for your review and adoption.

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3 AAC 306.030(a) is amended to read:

3 AAC 306.030. Petition for license or endorsement in area with no local government. (a) The board will not approve a new license **or new onsite consumption endorsement** in an area outside, but within 50 miles of, the boundary of a local government unless the board receives a petition to issue the license **or endorsement** signed by a majority of the permanent residents residing within one mile of the proposed premises.

3 AAC 306.030(b) is amended to read:

(b) The board will not approve a new license **or new onsite consumption endorsement** in an area that is 50 miles or more from the boundary of a local government unless the board receives a petition to issue the license **or endorsement** containing the signatures of two-thirds of the permanent residents residing within a radius of five miles of the United States post office station nearest to the proposed licensed premises. If there is no United States post office station within a radius of five miles of the proposed licensed premises, the petition must be signed by two-thirds of the permanent residents residing within a five-mile radius of the proposed licensed premises.

(Eff. 2/21/2016, Register 217; am ___ / ___ / ____, Register ____)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

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3 AAC 306.080(a) is amended to read:

3 AAC 306.080. Denial of license or endorsement application. (a) After review of the application, including the applicant's proposed operating plan and all relevant information, the board will deny an application for a new license or new onsite consumption endorsement if the board finds that

(1) the application is not complete as required under the applicable provisions of 3 AAC 306.020 - 3 AAC 306.055, or contains any false statement of material fact;

(2) the license or endorsement would violate any restriction in 3 AAC 306.010 or 3 AAC 306.015;

(3) the license or endorsement would violate any restriction applicable to the particular license or endorsement type authorized under this chapter;

(4) the license or endorsement is prohibited under this chapter as a result of an ordinance or election conducted under AS 17.38.210, 3 AAC 306.200, or 3 AAC 306.230;

(5) the applicant's actions or the operating plan does not adequately demonstrate that the applicant will comply with applicable provisions of this chapter;

(6) the license or endorsement would not be in the best interests of the public; or

(7) a protest by the local governing body is not arbitrary, capricious, and unreasonable.

The introductory language of 3 AAC 306.080(b) is amended to read:

(b) After review of the application and all relevant information, the board will deny an application for renewal of a marijuana establishment license or onsite consumption

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endorsement if the board finds

...

3 AAC 306.080(b)(3) is amended to read:

(3) that the license **or endorsement** has been operated in violation of a condition or restriction the board previously imposed;

(Eff. 2/21/2016, Register 217; am 2/21/2019, Register 229; am 8/21/2019, Register 231; am

___/___/___, Register ___)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.370 is repealed and readopted to read:

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores. (a)

Unless prohibited by local or state law, the board may approve an onsite consumption endorsement for a licensed retail marijuana store for consumption, on the marijuana retail store premises,

(1) of edible marijuana products only, in compliance with this section, in an indoor or outdoor area, regardless of whether the licensed retail marijuana store is freestanding;

(2) by any method, in compliance with this section, in an indoor or outdoor area of a freestanding licensed retail marijuana store.

(b) A licensed retail marijuana store with an approved onsite consumption endorsement

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is authorized to sell, for consumption at the time of purchase and only in an area designated as the marijuana consumption area,

(1) marijuana bud or flower, in quantities not to exceed one gram to any one person per day;

(2) edible marijuana products in quantities not to exceed 25 milligrams of THC to any one person per day; and

(3) a vaping device that contains not more than 0.3 grams of marijuana concentrate to any one person per day; a person may not consume marijuana concentrate onsite by a means other than vaping as described in this paragraph.

(c) A licensed retail marijuana store with an approved onsite consumption endorsement may

(1) sell food or beverages not containing marijuana or alcohol; and

(2) allow a person to remove from the licensed premises marijuana or marijuana products that have been purchased on the licensed premises for consumption under this section, if they are packaged in accordance with 3 AAC 306.345.

(d) A licensed retail marijuana store with an approved onsite consumption endorsement may not

(1) allow any licensee, employee, or agent of a licensee to consume marijuana or marijuana products, including marijuana concentrate, during the course of a work shift;

(2) allow a person to consume tobacco or tobacco products in the marijuana consumption area;

(3) allow a person to bring into or consume in the marijuana consumption area

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any marijuana or marijuana products that were not purchased at the licensed retail marijuana store;

(4) sell, offer to sell, or deliver marijuana or marijuana products at a price less than the price regularly charged for the marijuana or marijuana products during the same calendar week;

(5) sell, offer to sell, or deliver an unlimited amount of marijuana or marijuana products during a set period of time for a fixed price;

(6) sell, offer to sell, or deliver marijuana or marijuana products on any one day at prices less than those charged the general public on that day;

(7) encourage or permit an organized game or contest on the licensed premises that involves consuming marijuana or marijuana products or the awarding of marijuana or marijuana products as prizes; or

(8) advertise or promote in any way, either on or off the licensed premises, a practice prohibited under this section.

(e) A marijuana consumption area must have the following characteristics:

(1) the marijuana consumption area must be isolated from the other areas of the retail marijuana store, must be separated by walls and a secure door, and must have access only from the retail marijuana store;

(2) the licensed marijuana retail store must provide a smoke-free area for employees to monitor the marijuana consumption area;

(3) a marijuana consumption area that is indoors and in which smoking is permitted must have a ventilation system

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(A) that is separate from the ventilation system of the other areas of the licensed retail marijuana store or other licensed marijuana establishments in a freestanding building; and

(B) that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line;

(4) if outdoors, the marijuana consumption area must be found by the board to be compatible with uses in the surrounding area through evaluation of

(A) neighboring uses;

(B) the location of air intake vents on neighboring buildings, if consumption by smoking is permitted;

(C) a sight-obscuring wall or fence around the outdoor marijuana consumption area;

(D) objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater; and

(E) any other information the board finds relevant.

(f) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the endorsement fee set out in 3 AAC 306.100, and

(1) the applicant's operating plan, in a format the board prescribes, describing the retail marijuana store's plan for

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- (A) security, in addition to what is required for a retail marijuana store, including
 - (i) doors and locks;
 - (ii) windows;
 - (iii) measures to prevent diversion; and
 - (iv) measures to prohibit access to persons under 21 years of age;
- (B) ventilation, if consumption by smoking is to be permitted in an indoor area; ventilation plans must be
 - (i) signed and approved by a licensed mechanical engineer;
 - (ii) sufficient to remove visible smoke; and
 - (iii) consistent with all applicable building codes and ordinances;
- (C) monitoring overconsumption;
- (D) unconsumed marijuana, by disposal or by packaging in accordance with 3 AAC 306.345; and
- (E) preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for onsite consumption;

(2) the applicant's detailed diagram of the marijuana consumption area which must show the location of

- (A) the licensed premises of the retail marijuana store;
- (B) the serving area or areas;
- (C) ventilation exhaust points, if applicable;

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(D) the employee monitoring area;

(E) doors, windows, or other exits; and

(F) access control points;

(3) the title, lease, or other documentation showing the applicant's sole right of possession of the proposed marijuana consumption area, if the area is not already part of the approved licensed premises for the retail marijuana store; and

(4) for an outdoor marijuana consumption area,

(A) an affidavit that notice of an outdoor marijuana consumption area has been mailed to property owners, residents, and occupants of properties within 250 linear feet of the boundaries of the property on which the onsite consumption endorsement is proposed, or the notification distance required by the local government, whichever is greater.

(g) The retail marijuana store holding an onsite consumption endorsement under this chapter shall

(1) destroy all unconsumed marijuana left abandoned or unclaimed in the marijuana consumption area in accordance with the operating plan and 3 AAC 306.740;

(2) monitor patrons in the marijuana consumption area at all times, specifically for overconsumption;

(3) display all warning signs required under 3 AAC 306.360 and 3 AAC 306.365 within the marijuana consumption area, visible to all consumers;

(4) provide, at no cost to patrons, written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in

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the marijuana consumption area;

(5) package and label all marijuana or marijuana products sold for consumption on the premises as required in 3 AAC 306.345; and

(6) comply with any conditions set by the local government or placed on the endorsement by the board.

(h) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license. (Eff. 4/11/2019, Register 230; am ___/___/___, Register ___)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.900
	AS 17.38.070	AS 17.38.190	<u>AS 18.35.301</u>
	AS 17.38.121	AS 17.38.200	

3 AAC 306.990(b)(42) is amended to read:

(42) "freestanding"

(A) has the meaning given in AS 18.35.301(i)(1);

(B) does not include a building that contains a tenant other than one or more licensed marijuana establishments owned by the same business, individual, or group of individuals that seeks an onsite consumption endorsement;

3 AAC 306.990(b)(44) is amended to read:

(44) "marijuana consumption area" means a designated area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement, where

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marijuana and marijuana products **may be consumed**, excluding marijuana concentrates **other than those consumed by vaping under 3 AAC 306.370(b)(3)**; [, MAY BE CONSUMED.]

3 AAC 306.990(b) is amended by adding new paragraphs to read:

(49) "smoking" has the meaning given in AS 18.35.399;

(50) "vaping" means the action or practice of inhaling the aerosol produced by an electronic device that heats up and vaporizes a liquid or solid. (Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217; am 10/11/2017, Register 224; am 8/11/2018, Register 227; am 10/20/2018, Register 228; am 4/11/2019, Register 230; am 5/9/2019, Register 230; am 3/13/2020, Register 233; am ___/___/___, Register ___)

Authority:	AS 17.38.010	AS 17.38.121	AS 17.38.200
	AS 17.38.040	AS 17.38.150	AS 17.38.900
	AS 17.38.070	AS 17.38.190	<u>AS 18.35.301</u>