



## MEMORANDUM

TO: Peter Mlynarik, Chair, and  
Members of the Board

DATE: November 14, 2017

FROM: Erika McConnell, Director  
Marijuana Control Board

RE: Regulations Project – Definition of  
“Financial Interest”; Advertising  
Restrictions

### **Definition of “Financial Interest”**

**Summary:** As noted in discussion at the May 15, 2017, meeting, the definition of “direct or indirect financial interest” (3 AAC 306.015(e)(1) excludes a person’s right to receive rental charges on a percentage lease-rent agreement for real estate leased to a licensee, meaning that a rental or lease agreement can be set up allowing the landlord to receive a percentage of the marijuana facility’s earnings when the landlord is not a licensee. This exemption has the potential to allow a landlord, who is not a licensee, to be in a position to exert influence on the facility’s operations in a manner that is expected to be limited to licensees.

This proposal eliminates percentage lease or rent agreements from the exemption of direct or indirect financial interest. Under this scenario, any percentage lease or rent agreement could be created but the landlord would have to be a licensee.

As you know, the board has approved many licenses with percentage-based lease agreements. In general, these agreements have been for a small percentage of the marijuana facility’s income. At this meeting, two license applications have come to the board with extremely large percentages proposed.

Licensees and applicants who use percentage-based leases could move to graduated leases which would achieve a similar effect without involving the landlord in a financial interest in the business.

**Public Comment:** Comment period 8/14/17 to 9/29/17. Public comments attached.

**Recommendation:** Adopt change to 3 AAC 306.015(e)(1). Discuss how and when existing licensees with percentage-based leases should come into compliance or if they should be grandfathered.

## **Advertising Restrictions**

**Summary:** This regulation proposes the following:

- Advertising regulations are moved from applying to just retail stores (in Article 3 of the regulations) to applying to all licensees (in Article 7).
- The regulations are divided to separately address restrictions on advertising marijuana and marijuana products from restrictions on advertising a marijuana business.
- The restrictions on advertising marijuana and marijuana products are similar to current regulations. The warnings are required to be plainly visible, in at least half the font size of the advertisement if on a sign, in a font size no smaller than size 9 if in print, and played at the same speed as the advertisement if in audio format.
- A marijuana business may have no more than three signs (whether or not the business name is on the sign) that are either in the business's window or attached to the outside of the licensed premises.
- An advertisement for a marijuana business is no longer required to include the warning statements.

**Public Comment:** Comment period 8/14/17 to 9/29/17. Public comments attached.

**Recommendation:** More work should be done on the advertising regulations. Regulations should specifically address the various advertising mediums which create different issues. Print advertising is different from sign advertising is different from social media advertising. For example, if a marijuana business advertises in The Press (a free alternative newspaper in Anchorage), and The Press is distributed within 1,000 feet of a library, is that a violation? Additionally, limitations on promotional events should be kept and clarified. I recommend creating a subcommittee to work on these regulations.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306.015(e)(1) is amended to read:

(e) In this section,

(1) "direct or indirect financial interest" means

(A) a legal or equitable interest in the operation of a business licensed

under this chapter;

(B) ) does not include a person's right to receive

(i) rental charges on a graduated [OR PERCENTAGE] lease-rent

agreement for real estate leased to a licensee; or

(ii) consulting fee from a licensee for services that are allowed

under this chapter;

(Eff. 2/21/2016, Register 217, am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 17.38.010 AS 17.38.150 AS 17.38.200

3 AAC 306.360 is repealed:

**3 AAC 306.360. Restriction on advertising of marijuana and marijuana products**

Repealed. (Eff. 2/21/2016, Register 217; repealed \_\_/\_\_/\_\_\_\_, Register\_\_\_\_)

3 AAC 306 is amended by adding a new subsection in Article 7 to read:

**3 AAC 306.7xx. Restriction on advertising of marijuana and marijuana products**

(a) An advertisement for marijuana or a marijuana product must include the business name and license number.

(b) An advertisement for marijuana or a marijuana product may not contain a statement or illustration that

(1) is false or misleading;

(2) promotes excessive consumption;

(3) represents that the use of marijuana has curative or therapeutic effects;

(4) depicts a person under 21 years of age consuming marijuana; or

(5) includes any object or character, including a toy, a cartoon character, or any other depiction that appeals to a person under 21 years of age.

(c) A licensed marijuana business may not place an advertisement for marijuana or a marijuana product;

(1) within 1,000 feet of the perimeter of any child-centered facility, including a school, a child care facility or other facility providing services to children, a playground or recreation center, a public park, a library, or a game arcade that is open to persons under 21 years of age;

- (2) on or in a public transit vehicle or public transit shelter;
- (3) on or in a publicly owned or operated property;
- (4) within 1,000 feet of a substance abuse or treatment facility; or
- (5) on a campus for postsecondary education.

(d) A licensed marijuana business may not encourage the sale of marijuana or marijuana products

- (1) by using giveaway coupons as promotional materials;
- (2) by conducting games or competitions; or
- (3) by tying give-away items to the purchase of marijuana or marijuana products.

(e) All advertising for marijuana or any marijuana product must contain each of the following warnings, which must be plainly visible and at least half the font size of an advertisement on a sign, and no smaller than size 9 font when the advertisement is in printed form. Audio advertisements warnings must be understandable and played at the same speed as the advertisement.

- (1) “Marijuana has intoxicating effect and may be habit forming and addictive”;
- (2) “Marijuana impairs concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence.”;
- (3) “There are health risks associated with consumption of marijuana.”;
- (4) “For use only by adults twenty-one and older. Keep out of the reach of children.”;
- (5) “Marijuana should not be used by women who are pregnant or breast feeding.”

3 AAC 306 is amended by adding a new subsection in Article 7 to read:

**3 AAC 306.7xx. Restriction on advertising of a marijuana business**

(a) A licensed marijuana business may have not more than three signs, visible to the general public from the public right-of-way. A sign may only be placed in the marijuana business' window or attached to the outside of the licensed premises. The size of each sign may not exceed 4,800 square inches.

(b) A licensed marijuana business may place advertisements that include its name, logo, business type, contact information, location, and hours of operation.

(c) A licensed marijuana business may not place a business advertisement, except as provided in (a) of this section,

(1) within 1,000 feet of the perimeter of any child-centered facility, including a school, a child care facility or other facility providing services to children, a playground or recreation center, a public park, a library, or a game arcade that is open to persons under 21 years of age;

(2) on or in a public transit vehicle or public transit shelter;

(3) on or in a publicly owned or operated property;

(4) within 1,000 feet of a substance abuse or treatment facility; or

(5) on a campus for postsecondary education.

(Eff. \_\_/\_\_/\_\_\_\_. 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		

Esteemed Marijuana Control Board,

Thank you for the opportunity to offer my comments on proposed changes to 3 AAC 306.015(e)(B)(i). The current regulation set we operate under allows a non-licensee to receive rent on a percentage lease/rent agreement for property leased to a licensee. Many landlords and building owners, including those on the Kenai Peninsula, have relied upon this currently regulation when investing money in property and forming business relationships and structuring.

The proposed regulation to remove this language, and therefore remove this option, will cause financial hardship on those small businesses who have relied upon it. Contracts already in place will become regulatorily non-compliant. These businesses have already made investments and decisions based on the current regulation your board created. Please do not impose this damaging decision. It would only harm businesses, both licensed and not, and cause job losses, while adding no additional safety for the public. It would also increase the cost to the state for monitoring the industry. I ask you, as the board tasked with governing us, keep this regulation in its current form and continue to allow percentage based lease arrangements. This provision was included in the regulations for a reason. It is extremely difficult, as a startup cannabis company to find property to rent for operations. Often a percentage based lease (more attractive to a landowner who is taking the perceived risk of leasing to a Licensee) is the final bargaining piece that seals the rent deal. Cannabis companies have a very hard time getting investment capital as the banks are closed off to us. This makes leasing a building for operations necessary for most companies who cannot afford to build or buy.

If you remove this exception from the definition of direct or indirect financial interest, then I would like you to provide grandfather rights for those businesses who have already been approved for licensure by you, the Board, and have already been operating under this type of lease arrangement. Businesses who are complying and doing their best should not continually be caused harm by the regulatory process.

Respectfully,

Leif Abel

Greatland Ganja

Kasilof, AK

September 20, 2017

Seth Andersen  
1633 W 5<sup>th</sup> Avenue  
Anchorage, AK 99501

Alaska Alcohol and Marijuana Control Board  
550 W 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501

Subject: Public Comment - Percentage based lease arrangements 3 AAC 306.015(e)(B)(i)

Dear AMCO,

I am a partner in a real estate entity which leases property to a marijuana cultivation, manufacture, and retail business. We provide lease space to the marijuana business licensee and have no control, management or participation in our tenant's business operation. A very common lease structure for new businesses, startups, and emerging markets is for the tenant to pay a base rent plus additional rents based on success of the Tenant's business. The additional rent is a mechanism that recognizes risk a Landlord assumes in supporting a startup business or new market. The Landlords risk includes deferred or abated rent during startup, building renovations that are specific to the startups needs and uses (which would be costly to remove or repurpose if a startup is not successful) and the potential for a struggling start up business to tie up property from generating income if the business is unsuccessful and cannot otherwise be rented. Additional and significant risk comes from the Landlord not having control or voting rights to their Tenants business.

Many organizations that provide services to startup businesses use similar arrangements. For example, an engineering firm may provide professional services at an initially discounted rate until the business has positive cash flow and at which time the engineering firm recovers their full rate plus a fee for assuming a level of risk while the business starts to grow. Landlords, building owners, and entrepreneurs, including myself, rely up these types of rent calculation to grow businesses, create economic development opportunities, and support new business opportunities which are difficult to traditionally finance or in addition to traditional financing options.

Current Alaska marijuana business regulation 3 AAC 306.015(e)(B)(i) allows an entity (which is not a marijuana licensee) to receive rents based on the Tenant's (marijuana licensee's) business performance. The proposed regulation to remove this language will create an un-justified burden on Landlords and Tenants who use these types of rent calculations, have relied upon it, and have made business decisions based on it. It is extremely difficult to successfully build a new business (and maintain established real estate business). Revising regulation that effects business structures and contracts, at any time (but especially during the startup period), will significantly affect the success of a new business and detract from building new businesses and economic opportunities.



I urge you, the group of individuals tasked with formulating regulations which govern this new industry, to keep this regulation in its current form and continue to allow percentage based rent lease arrangements.

Regards,

A handwritten signature in black ink, appearing to read 'Seth Andersen', with a stylized, flowing script.

Seth Andersen

907 441 5772

Marijuana Control Board,

**Marijuana Control Board proposed regulations—changes to financial interest in marijuana business and restrictions on advertising.**

I appreciate that here in Alaska we require the owners of businesses to be Alaskans. My comment of taking out the percentage base lease is that it is prevalent in the commercial leases outside of the cannabis industry. I spoke with a realtor who sits on the state realtor commission and he informed me of how often a percentage base lease is used especially in the retail industry.

**3 AAC 306.7xx Restriction on advertising of marijuana and marijuana products**

I have many concerns when it come to this advertising project. It appears to me that some of this is written in such a way to smother the industry with no bases on protecting the health or safety of the public.

The mission Statement of The Department of Commerce, Community, and Economic Development says “Promote a healthy economy, strong communities, and protect consumers in Alaska.” In my opinion this is an excellent mission statement to consider when we are forming regulations that have impacts not only for the public but for the legal and licensed businesses. The way I interpret the mission statement is that the businesses should be allowed to thrive up until it puts Alaskan consumers at risk.

The section I copied below is a good first example. Not being allowed to conduct any onsite promotions to encourage the sale to adults that are 21 years of age or older only hinders the business. I believe this would be just as a far reach to say that these items promote excessive consumption as saying a low price point promotes excessive consumption since someone might buy more. Why is it a problem that a business wants to gain customers? Is that not an expected main point of a business to gain and have customers?

Why would a business not be allowed to encourage the sale of the products it carries to customers that can legally make a purchase?

306.7XX (d) A licensed marijuana business may not encourage the sale of marijuana or marijuana products

- (1) by using giveaway coupons as promotional materials;
- (2) by conducting games or competitions; or
- (3) by tying give-away items to the purchase of marijuana or marijuana products.

In the below section is where I find the most troubling part of this regulation project. It reads in such a way that the restrictions put on advertising a business’s name are extremely harsh and go beyond that of advertisement for marijuana or marijuana products. In (c) it says that our signs attached to the business are the only allowed form of advertising. If this is left in I would read this as I can no longer even hand out business cards without violating this section.

I don’t believe this would stand the test against the mission statement for the CED. It would NOT “Promote a healthy economy” to prevent a business from telling anyone it exists. It would NOT “Promote strong communities” by keeping businesses in the shadows and making open

communication restricted. It would NOT “protect the consumers in Alaska” by hindering their ability to find a legally, CED licensed facility.

Why are restriction of the name and location of a business something even being added to our regulations if it is not to protect the public? Do we really give the public so little credit that we believe they need to be protected from even having to read the name of a legally licensed facility?

### **3 AAC 306.7xx. Restriction on advertising of a marijuana business**

(a) A licensed marijuana business may have not more than three signs, visible to the general public from the public right-of-way. A sign may only be placed in the marijuana business’ window or attached to the outside of the licensed premises. The size of each sign may not exceed 4,800 square inches.

(b) A licensed marijuana business may place advertisements that include its name, logo, business type, contact information, location, and hours of operation.

(c) A licensed marijuana business may not place a business advertisement, except as provided in (a) of this section,

(1) within 1,000 feet of the perimeter of any child-centered facility, including a school, a child care facility or other facility providing services to children, a playground or recreation center, a public park, a library, or a game arcade that is open to persons under 21 years of age;

(2) on or in a public transit vehicle or public transit shelter;

(3) on or in a publicly owned or operated property;

(4) within 1,000 feet of a substance abuse or treatment facility; or

(5) on a campus for postsecondary education.

Bailey Stuart

**From:** Lisa Coates  
**To:** [CED AMCO REGS \(CED sponsored\); McConnell, Erika B \(CED\)](#)  
**Subject:** Public Comment Regarding 3 AAC 306.015(e)(B)(i) - Percentage Based Leased Arrangements  
**Date:** Tuesday, September 19, 2017 7:12:34 PM

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I am writing you, the Marijuana Control Board, to request that you keep the exception in the Alaska marijuana regulations to allow a landlord to receive rent payments on a percentage based agreement- 3 AAC 306.15(e)(B)(i). As a proposed licensee for a new marijuana business I have already relied upon the current set of laws when planning my new business. The negotiated buildout with my landlord is already a part of my business model. My entire business model is based on the current regulations which allows me to fund my business without selling off all of my shares. With no bank financing or outside investments allowed, how are new marijuana businesses to start up? Additionally, both potential licensees and building owners have relied on current regulations when forming business plans - which is very difficult when those regulations are always changing.

If for some reason, you decide to remove this exception from the regulations, I would encourage you to grandfather those licenses that have already been operating under this set of laws when planning their business model.

Sincerely and respectfully,  
Lisa Coates  
[Lisa@ljoutfitters.com](mailto:Lisa@ljoutfitters.com)  
907-252-4755

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Lisa Coates  
[lisa@ljoutfitters.com](mailto:lisa@ljoutfitters.com)  
907-252-4755

**From:** Buddy Crowder  
**To:** [CED AMCO REGS \(CED sponsored\); McConnell, Erika B \(CED\)](#)  
**Subject:** Public Comment - Percentage based lease arrangements 3 AAC 306.015(e)(B)(i)  
**Date:** Tuesday, September 19, 2017 6:56:34 PM

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Dear Marijuana Control Board,

As you know, current regulations allow a person (who is not a licensee) to receive rent on a percentage lease/rent agreement for property leased to a licensee. Many landlords and building owners, including myself, have relied upon this law as it is currently written when investing money and forming business relationships. The proposed regulation to remove this language and therefore remove this option will create a heavy burden on those who have relied upon it and have already made investments and decisions based on it. It is extremely difficult to build a business on a foundation that constantly shifts. I urge you, as the group of individuals tasked with formulating the regulations that govern this industry, to keep this regulation in its current form and continue to allow percentage based lease arrangements. This provision was included in the regs for a reason; this is a way for marijuana business start-ups to fund their new business and get off of the ground since no outside ownership is allowed and banks won't finance marijuana businesses.

If you do decide to remove this exception from the definition of direct or indirect financial interest, then I would like to strongly encourage that you provide for some sort of grandfather right for those businesses who have already been approved for licensure by you, the Board, and/or have already been operating under this type of lease arrangement.

Respectfully,  
Buddy Crowder  
Herban Extracts, llc  
[Buddy@907maryjane.com](mailto:Buddy@907maryjane.com)

**From:** Paul Disdier  
**To:** [CED AMCO REGS \(CED sponsored\)](#)  
**Subject:** Public Comment on Regulations Change  
**Date:** Friday, September 29, 2017 4:10:53 PM

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Good afternoon,

We at The Fireweed Factory would like to comment that we are against the following proposed regulations changes:

The Marijuana Control Board proposes to adopt regulation changes in 3 AAC 306 of the Alaska Administrative Code, dealing with direct and indirect financial interest in marijuana businesses, and restrictions on advertising of marijuana, marijuana products and marijuana businesses, including the following:

- (1) 3 AAC 306.015(e), related to direct or indirect financial interest in a marijuana business
- (2) 3 AAC 306.360 would be repealed.
- (3) 3 AAC 306.700 would add a new subsection regarding restrictions on advertising of marijuana and marijuana products.
- (4) 3 AAC 306.700 would add a new subsection regarding restrictions on advertising of marijuana businesses.

Thank you,

The Fireweed Factory, LLC, lic. #10266 and #10800  
Juneau, AK

Marijuana Control Board,

**Marijuana Control Board proposed regulations—changes to financial interest in marijuana business and restrictions on advertising.**

I appreciate that here in Alaska we require the owners of businesses to be Alaskans. My comment of taking out the percentage base lease is that it is prevalent in the commercial leases outside of the cannabis industry. I spoke with a realtor who sits on the state realtor commission and he informed me of how often a percentage base lease is used especially in the retail industry.

**3 AAC 306.7xx Restriction on advertising of marijuana and marijuana products**

I have many concerns when it come to this advertising project. It appears to me that some of this is written in such a way to smother the industry with no bases on protecting the health or safety of the public.

The mission Statement of The Department of Commerce, Community, and Economic Development says “Promote a healthy economy, strong communities, and protect consumers in Alaska.” In my opinion this is an excellent mission statement to consider when we are forming regulations that have impacts not only for the public but for the legal and licensed businesses. The way I interpret the mission statement is that the businesses should be allowed to thrive up until it puts Alaskan consumers at risk.

The section I copied below is a good first example. Not being allowed to conduct any onsite promotions to encourage the sale to adults that are 21 years of age or older only hinders the business. I believe this would be just as a far reach to say that these items promote excessive consumption as saying a low price point promotes excessive consumption since someone might buy more. Why is it a problem that a business wants to gain customers? Is that not an expected main point of a business to gain and have customers?

Why would a business not be allowed to encourage the sale of the products it carries to customers that can legally make a purchase?

306.7XX (d) A licensed marijuana business may not encourage the sale of marijuana or marijuana products

- (1) by using giveaway coupons as promotional materials;
- (2) by conducting games or competitions; or
- (3) by tying give-away items to the purchase of marijuana or marijuana products.

In the below section is where I find the most troubling part of this regulation project. It reads in such a way that the restrictions put on advertising a business’s name are extremely harsh and go beyond that of advertisement for marijuana or marijuana products. In (c) it says that our signs attached to the business are the only allowed form of advertising. If this is left in I would read this as I can no longer even hand out business cards without violating this section.

I don’t believe this would stand the test against the mission statement for the CED. It would NOT “Promote a healthy economy” to prevent a business from telling anyone it exists. It would NOT “Promote strong communities” by keeping businesses in the shadows and making open

communication restricted. It would NOT “protect the consumers in Alaska” by hindering their ability to find a legally, CED licensed facility.

Why are restriction of the name and location of a business something even being added to our regulations if it is not to protect the public? Do we really give the public so little credit that we believe they need to be protected from even having to read the name of a legally licensed facility?

### **3 AAC 306.7xx. Restriction on advertising of a marijuana business**

(a) A licensed marijuana business may have not more than three signs, visible to the general public from the public right-of-way. A sign may only be placed in the marijuana business’ window or attached to the outside of the licensed premises. The size of each sign may not exceed 4,800 square inches.

(b) A licensed marijuana business may place advertisements that include its name, logo, business type, contact information, location, and hours of operation.

(c) A licensed marijuana business may not place a business advertisement, except as provided in (a) of this section,

(1) within 1,000 feet of the perimeter of any child-centered facility, including a school, a child care facility or other facility providing services to children, a playground or recreation center, a public park, a library, or a game arcade that is open to persons under 21 years of age;

(2) on or in a public transit vehicle or public transit shelter;

(3) on or in a publicly owned or operated property;

(4) within 1,000 feet of a substance abuse or treatment facility; or

(5) on a campus for postsecondary education.

Chris Farris



**From:** Reed Harding  
**To:** [CED AMCO REGS \(CED sponsored\)](#)  
**Subject:** Public Comment on AS 17.38.070; AS 17.38.190; AS 17.38.900 - Restrictions on advertising marijuana  
**Date:** Thursday, September 28, 2017 5:17:23 PM

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This public comment is in regards to Marijuana Control Board proposed regulations--changes to financial interest in marijuana business and restrictions on advertising involving statutes AS 17.38.070; AS 17.38.190; AS 17.38.900.

My name is Reed Harding and I am a Drug Free Communities Coordinator working for the Ketchikan Wellness Coalition (KWC). I saw that you are accepting public comment on possibly revising some rules for advertising related to marijuana. Working in prevention I am very concerned about youth usage and also working for KWC I recognize that smoking marijuana is not healthy. I am not here to discredit that some people feel they receive benefits from consuming only that overall it is not something we want to encourage the public to do.

I feel strongly, as I expect those who read this letter do, that the intent of the current law is to protect consumers and youth from being taken advantage of by a profit driven industry. To me this issue is similar to the public health issues that tobacco and alcohol cause and as such we have a duty to protect the public from misinformation.

After researching this topic on the Center for Disease Control and the World Health Organization I would like to offer some of the best suggestions related to marijuana advertising.

- Marijuana signage currently being three signs at 4,800 square inches is excessive. For instance, Connecticut limits it to one sign 16 x 18 inches.
- The usage of color and logos for marijuana advertising should be restricted. Signs should be simple and mono-color.
- Marijuana advertisement should not be aimed specifically at minors or, in particular, depict minors smoking or consuming.
- Marijuana advertisement should not link the consumption of marijuana to enhanced physical performance or to driving.
- Marijuana advertisement should not create the impression that the consumption of marijuana contributes towards social or sexual success.
- Marijuana advertisement should not claim that marijuana has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal/emotional conflicts.
- Marijuana advertisement should not encourage immoderate consumption of marijuana or present abstinence or moderation in a negative light.
- Marijuana advertisement should not place emphasis on high THC content as being a positive quality of the product.
- No marijuana advertising when children or teen programming is in place (TV, Radio, Internet). 21+ nature of the product means content should also be restricted to after 8 pm on weekdays and no adverts on the weekends.
- Marijuana advertisement should not utilize television, radio, or internet

advertising unless the retail marijuana establishment has reliable evidence that no more than 30 percent of the audience for the program on which the Advertising is to air is reasonably expected to be under the age of 21.

Ultimately we don't want people to build brands off of products that cause harm. I understand that marijuana was voted to be legalized for private consumption but that does not mean the state should be endorsing it. By not creating strong advertising rules we will see an increase in youth usage and adult consumption. This is not a good thing for our state as what little tax money is collected will be dwarfed by the harm it will create.

Thank you for taking the time to consider these points.

Reed Harding  
DFC Program Coordinator  
Ketchikan Wellness Coalition  
602 Dock Street, Suite 108  
Ketchikan, AK 99901  
(907) 228-7553



Jana D. Weltzin  
Licensed in Alaska &  
Arizona

3003 Minnesota  
Blvd., Suite 201  
Anchorage, Alaska 99501  
Phone 630-913-1113  
Main Office 907-231-3750  
jana@jdwcounsel.com

August 25, 2017

Marijuana Control Board  
Director McConnell  
*Sent via Email*

**Re: Public Testimony Submitted for September 2017 MCB**

Dear Esteemed MCB Members & Director McConnell:

Please consider the following issues and concerns during your MCB September 2017 meeting. Thank you for your service to the state and Industry.

Since the July meeting, our office has been receiving new requests from AMCO staff that we have never gotten before in previous incomplete letters/correspondence from the AMCO office. These new requests are said to be “board decisions”, yet as I recall them, these matters were either comments or concerns expressed during discussions amongst the board members by an individual board member(s) – but the general banter back and forth did not result in a motion and a subsequent vote by the board, drawing some type of action or conclusion. The examples below were merely discussions, as opposed to “decisions” made by/voted on by the board as a whole or “deliberations” on specific motions.

AS 17.38.111 and AS 17.38.121 - clearly contemplates the board acting as a whole when making any decisions, approvals or denials as well as the board training manual posted on AMCO’s website. In fact, it is clear in the board training manual posted on AMCO’s website that there is a clear delineation from just board discussions, to board debates once a motion is actually formally made. On page 21 of the Marijuana Control Board Orientation Manual, dated July 2, 2015, the manual articulates the following:

**Taking Part in Debate**

*Debate and discussion are not the same.* Discussion is general and does not necessarily lead to closure of an issue. It is the method used

for less formal meetings and work sessions. Debate occurs after a motion has been made, and formal board or commission actions are required. Board discussion **is not a formal request for action**, so members should take care to make a motion in order to propose an actionable item--particularly one that involves a fiscal matter, policy change, or staff response.

Emphasis added, page 21.

Some examples of new requests received from the AMCO office labeled as “board decisions” are:

- Requests in incomplete letters from examiners requiring that a sample of the “actual label” to be used for retailers and cultivators – as I recall the discussion the board had at the July meeting (I don’t yet have access to the meeting minutes) an individual board member, voiced concern that the board did not require a sample of and did not ever lay eyes on the logos and labels that retailers and cultivators will use and some of the other board members agreed that was true and the discussion moved on to another topic, no vote or official “decision” was made regarding this matter, yet it is now being required by AMCO for new applications. Therefore, we have received several incomplete applications stating that the application is incomplete because no sample logo or actual label was provided.
- Another example, was an incomplete response that stated that the board has decided that a licensed premises must be contiguous. The incomplete response required that for this particular applicant license to be compliant with the regulations, even though it was all located enclosed in buildings on one single address, the site would need to be fully enclosed by a fence, or obtain a separate license for each building on the addressed site. I don’t recall the board considering a motion to make this a formal policy, I only recall the discussion of it and members voicing their varying opinions (again, the meeting minutes are not yet available to refer to).

#### Items Delegated to Director and or Chief of Enforcement

I believe last meeting in July, we discussed some items to be delegated to the director &/or chief of enforcement such as change in licensed premises diagrams, operating plan changes, and perhaps other delegations that I cannot specifically recall. It may be helpful for industry participants, AMCO staff, and MCB members if there was a list of currently approved decisions that have been delegated to the Director so that the industry can better plan for their business modifications and know if a change is possible within weeks via Director delegation or whether that business would necessarily need to wait until the next MCB meeting to implement the proposed change.

#### Persistence of misuse of Marijuana Handler Permits

The misrepresentation by some persons holding MHP and putting themselves out to the public as licensed to conduct illegal activity is continuing. Currently, there is no tool enforcement can use to revoke or suspend MHP holders who are using the permits to undermine the legal market. We must have a mechanism to combat this misuse. I understand it may not be the most popular

proposal made, but I believe we must give enforcement a tool to revoke MHP holders who are utilizing their permits in a manner that puts the public's health and safety at risk and undermines the taxed, regulated and tested market. I have drafted some suggested regulatory language for the boards consideration:

306.700. is Amended by adding:

(F) MCB shall require the following to be disclosed by an applicant for a MHP:

(1) Has been convicted of a felony in the state and either

(a) less than 5 years has elapsed from time of conviction; or

(b) person is currently on probation or parole for that felony.

(2) Has within 2 years, before submitting an application, been convicted of a class A misdemeanor crime in the state involving a controlled substance other than a Schedule VI controlled substance; or

(3) Has within 2 years before submitting an application, been convicted of a class A misdemeanor in the state relating to selling, furnishing, or distributing marijuana.

(G) If Chief of Enforcement or the Director deems it is in the best interest of Public Health and safety to deny a MHP based on required disclosures above, then it shall do so and applicant may appeal denial to MCB within seven (7) business days of notice of denial. MCB shall set a special hearing to consider the denial and provide the applicant an opportunity to appeal denial to the MCB. MCB shall determine whether to sustain the denial in the interest of public health & safety, or to overturn the denial and grant the applicant a MHP.

Add in new section

3 AAC.306.XXX

(a) MCB may suspend or revoke MHP issued under this chapter if:

(1) If the board becomes aware that a permit applicant did not disclose required disclosures under 3 AAC.306.700(f) (1) or (2) or (3).

(b) The Director, Chief of Enforcement, or MCB may revoke or suspend a permit issued under this chapter, refuse to renew a permit, or impose a civil fine if a MHP Holder is taking actions to undermined the legal commercial market, misrepresent themselves to the public, use MHP in a manner that is not in the best interest of Public Health and Safety, or an applicant for a MHP misrepresented themselves on background check, affidavit, declaration signed statement, under AS 17.38, 17.37 or this chapter.

#### Change of Ownership Final Form

There is still no actual transfer of ownership application, just the MJ-17a: Temporary Report of Change in Ownership. All the transfer requests this Board has seen have not actually been dealt

with – AMCO staff is, to the best of our understanding, compiling a list of persons who have requested a transfer, but the actual transfer hasn't been handled because the transfer form has yet to be finalized. Many persons who were licensees that transferred their interest are concerned about the possibility of the continuing liability that stems from the operation of the license to the licensee. Additionally, there is concern for new investors who have purchased a piece of an entity that owns a license, and technically are not considered legal licensees.

Our request is for the Board to direct AMCO staff to finalize the transfer of ownership mechanism and complete the transfer requests in final form for the Board's review and approval.

### Reiterating the Lack of Clarity in Advertising Regulations

Lack of clarity as to whom the advertising regulations apply to, what the terms mean as there are limited definitions provided in the regulations and clarity as to what types of mediums are allowed for advertisement has had a chilling effect on the industry's commercial speech. I propose creating a set of regulations in Article 7 – Operating Requirements for All Marijuana Establishments – and address advertisement holistically for all license types as follows:

#### *\*Proposed Advertisement Regulations\**

##### **Advertising - Purpose and Application of Rules**

- (1) Marijuana Control Board serves the interests of the citizens of Alaska by regulating and prohibiting advertising marijuana items in a manner:
  - (a) That is attractive to minors;
  - (b) That promotes excessive use;
  - (c) That promotes activity that is illegal under Alaska law; or
  - (d) That otherwise presents a significant risk to public health and safety.
- (2) The Control Board also serves the interests of Alaskans by allowing advertising for the purpose of informing the public of the availability and characteristics of marijuana.
- (3) All marijuana advertising by a licensee must conform to these rules.

##### **Advertising Restrictions**

- (1) Marijuana advertising may not:
  - (a) Contain statements that are deceptive, false, or misleading;
  - (b) Contain any content that can reasonably be considered to target individuals under the age of 21, including but not limited to images of minors, cartoon characters, toys, or similar images and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;
  - (c) Specifically encourages the transportation of marijuana items across state lines;
  - (d) Assert that marijuana items are safe because they are regulated by the Control Board or otherwise make claims that any government agency endorses or supports marijuana;
  - (e) Make claims that recreational marijuana has curative or therapeutic effects;
  - (f) Display consumption of marijuana items;
  - (g) Contain material that encourages the use of marijuana because of its intoxicating effect; or
  - (h) Contain material that encourages excessive or rapid consumption.
- (2) A licensee may not make any deceptive, false, or misleading assertions or statements on any

informational material, any sign, or any document provided to a consumer.

(3) A licensee must include the following statement on all print, billboard, television, radio and internet advertising in font size legible to the viewer:

(a) "Do not operate a vehicle or machinery under the influence of this drug".

(b) "For use only by adults twenty-one years of age and older."

(c) "Keep out of the reach of children."

(4) A licensee may not engage in advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

### **Advertising - Definitions**

(1) "Advertising" is publicizing the trade name of a licensee together with words or symbols referring to marijuana or publicizing the brand name of marijuana or a marijuana product.

(2) "Billboard" means a large outdoor advertising structure.

(3) "Handbill" is a flyer, leaflet, or sheet that advertises marijuana.

(4) "Radio" means a system for transmitting sound without visual images, and includes broadcast, cable, on-demand, satellite, or internet programming. Radio includes any audio programming downloaded or streamed via the internet.

(5) "Television" means a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming. Television includes any video programming downloaded or streamed via the internet.

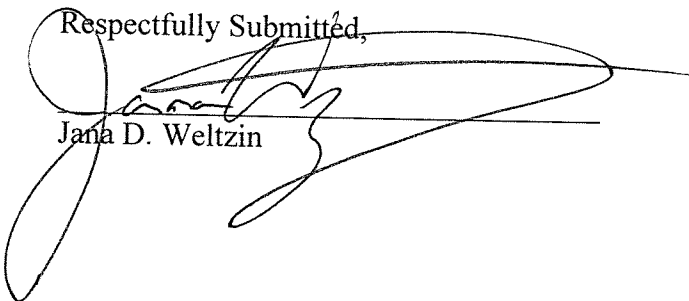
(6) "Internet" means an electronic communications network that connects computer networks and organizational computer facilities around the world.

### Work session sometime?

Is it possible to arrange a publicly noticed work session with the board and the public? In the Marijuana Control Board Orientation Manual it contemplates in several sections (page 16 and page 21) that work sessions may be used to discuss proposed regulations or for a less formal type of meeting that doesn't necessarily lead to a closure of an issue. Since the start of the MCB formation I do not think we have ever utilized the work session tool. I think it would be helpful for the Board and staff to see some of the end product/packaging/labeling of these facilities and get a chance to ask how this is all playing out in the real world to industry participants and even local government officials too. It will help build trust, communication and mutual understanding amongst industry participants, the public and Staff/MCB. Some of the confusion in this process I think comes from it being so theoretical (as it was from the start) but now there's real tangible outcomes that may be helpful for the board to see – and also gratifying too to see these concepts put into play and how the growth of the industry is effecting the business owners, local government and public.

Lastly, and most importantly, this industry is moving fast – in the cannabis industry, life is like dog years, one year feels like seven, there's so much work on both ends and so much uncertainty and we all need to understand the pressures both the industry and

regulators are under to make this industry safe and free from federal intervention. I know that my office sees this the most, but for anyone else that reads this letter, the staff, enforcement officers, and the director at AMCO are not regular government employees. They are emailing at 7AM and sometimes late into the night past 9pm – to say they are working hard is a complete understatement. I am so impressed by their dedication, commitment to their responsibilities, thoroughness and organizational skill, and their incredible effort they've expended on this industry which has undoubtedly dipped into their personal lives, taking time away from their families and their individual "me time". Thank you to them for playing a huge role, if not the biggest role, in this industry's success to date.

Respectfully Submitted,  
  
Jana D. Weltzin



**From:** Carey Mills  
**To:** [McConnell, Erika B \(CED\)](#)  
**Cc:** [CED AMCO REGS \(CED sponsored\)](#)  
**Date:** Friday, September 22, 2017 11:42:00 AM

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To Erika McConnell and members of the board,

Re: Public Comment - Percentage based lease arrangements 3 AAC 306.015(e)(B)(i)

As you know, current regulations allow a person (who is not a licensee) to receive rent on a percentage lease/rent agreement for property leased to a licensee. Many landlords and building owners, including myself, have relied upon this law as it is currently written when investing money and forming business relationships.

The proposed regulation to remove this language and therefore remove this option will create a heavy burden on those who have relied upon it and have already made investments and decisions based on it. It is extremely difficult to build a business on a foundation that constantly shifts. I urge you, as the group of individuals tasked with formulating the regulations that govern this industry, to keep this regulation in its current form and continue to allow percentage based lease arrangements. This provision was included in the regs for a reason; this was a way for marijuana business start-ups to fund their new business and get off the ground since no outside ownership is allowed and banks won't finance marijuana businesses.

If you do decide to remove this exception from the definition of direct or indirect financial interest, then I would like to strongly encourage that you provide for some sort of grandfather right for those businesses who have already been approved for licensure by you, the Board, and have already been operating under this type of lease arrangement.

Respectfully,  
Carey Mills  
9/22/19

Marijuana Control Board,

**Marijuana Control Board proposed regulations—changes to financial interest in marijuana business and restrictions on advertising.**

I appreciate that here in Alaska we require the owners of businesses to be Alaskans. My comment of taking out the percentage base lease is that it is prevalent in the commercial leases outside of the cannabis industry. I spoke with a realtor who sits on the state realtor commission and he informed me of how often a percentage base lease is used especially in the retail industry.

**3 AAC 306.7xx Restriction on advertising of marijuana and marijuana products**

I have many concerns when it come to this advertising project. It appears to me that some of this is written in such a way to smother the industry with no bases on protecting the health or safety of the public.

The mission Statement of The Department of Commerce, Community, and Economic Development says “Promote a healthy economy, strong communities, and protect consumers in Alaska.” In my opinion this is an excellent mission statement to consider when we are forming regulations that have impacts not only for the public but for the legal and licensed businesses. The way I interpret the mission statement is that the businesses should be allowed to thrive up until it puts Alaskan consumers at risk.

The section I copied below is a good first example. Not being allowed to conduct any onsite promotions to encourage the sale to adults that are 21 years of age or older only hinders the business. I believe this would be just as a far reach to say that these items promote excessive consumption as saying a low price point promotes excessive consumption since someone might buy more. Why is it a problem that a business wants to gain customers? Is that not an expected main point of a business to gain and have customers?

Why would a business not be allowed to encourage the sale of the products it carries to customers that can legally make a purchase?

306.7XX (d) A licensed marijuana business may not encourage the sale of marijuana or marijuana products

- (1) by using giveaway coupons as promotional materials;
- (2) by conducting games or competitions; or
- (3) by tying give-away items to the purchase of marijuana or marijuana products.

In the below section is where I find the most troubling part of this regulation project. It reads in such a way that the restrictions put on advertising a business’s name are extremely harsh and go beyond that of advertisement for marijuana or marijuana products. In (c) it says that our signs attached to the business are the only allowed form of advertising. If this is left in I would read this as I can no longer even hand out business cards without violating this section.

I don’t believe this would stand the test against the mission statement for the CED. It would NOT “Promote a healthy economy” to prevent a business from telling anyone it exists. It would NOT “Promote strong communities” by keeping businesses in the shadows and making open

communication restricted. It would NOT “protect the consumers in Alaska” by hindering their ability to find a legally, CED licensed facility.

Why are restriction of the name and location of a business something even being added to our regulations if it is not to protect the public? Do we really give the public so little credit that we believe they need to be protected from even having to read the name of a legally licensed facility?

### **3 AAC 306.7xx. Restriction on advertising of a marijuana business**

(a) A licensed marijuana business may have not more than three signs, visible to the general public from the public right-of-way. A sign may only be placed in the marijuana business’ window or attached to the outside of the licensed premises. The size of each sign may not exceed 4,800 square inches.

(b) A licensed marijuana business may place advertisements that include its name, logo, business type, contact information, location, and hours of operation.

(c) A licensed marijuana business may not place a business advertisement, except as provided in (a) of this section,

(1) within 1,000 feet of the perimeter of any child-centered facility, including a school, a child care facility or other facility providing services to children, a playground or recreation center, a public park, a library, or a game arcade that is open to persons under 21 years of age;

(2) on or in a public transit vehicle or public transit shelter;

(3) on or in a publicly owned or operated property;

(4) within 1,000 feet of a substance abuse or treatment facility; or

(5) on a campus for postsecondary education.

Caleb Saunders

**From:** steve@greatnortherncannabis.com  
**To:** [CED AMCO REGS \(CED sponsored\)](#)  
**Subject:** Comments on Proposed Financial Interest & Advertising Regulations  
**Date:** Friday, September 08, 2017 10:46:14 AM

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September 13, 2017

Marijuana Control Board

Peter Mlynarik, Chair

Mark Springer

Loren Jones

Brandon Emmett

Nicholas Miller

Alcohol & Marijuana Control Office

550 West Seventh Avenue, Suite 1600

Anchorage, Alaska 99501

RE: Proposed 3 AAC 306.015(e); 3 AAC 306.360; 3 AAC 306.700 – Financial interests and advertising

Dear Sirs:

Great Northern Cannabis, Incorporated (GNC) is an Alaska corporation with approximately 40 full- and part-time employees, and 25 Alaskan shareholders from a wide variety of backgrounds. We currently own and operate a cultivation facility and a retail store. We thank you for the opportunity to comment on the proposed regulations for financial interests and advertising.

GNC has no position on 3 AAC 306.015 (e) (1). We would note, however, that we have existing leases that, were this regulation to go into effect, would be in violation of the proposed regulation. We would further note that leases including a percentage of receipts are not uncommon. We would encourage the board to carefully consider the impacts of this proposal and, should it decide to enact it or something similar, how to address existing leases.

In general, GNC is supportive of the regulatory changes related to advertising with the following caveats:

1. We feel changes should be made to 3 AAC 306.7xx (c) to clarify that:
  - a. A permanent advertising feature (e.g. sign) should not have to be abandoned if a restricted use moves within the restricted zone.
  - b. A print advertisement in a periodical with a distribution medium within the restricted zone does not constitute a violation of this prohibition. For example,

- a newspaper advertisement where the paper has a box in or adjacent to a park.
2. We are concerned that print advertisement warnings must adhere to minimum font sizes and audio advertisement warnings to the same speed as the remainder of the advertisement. This is not consistent with practices required of many other industries. If the warnings requirements are deemed to be in the public interest then we would respectfully request that the warning language be shortened to a reasonable length (e.g. "The federal government considers marijuana to be a Schedule 1 drug.") We obviously do not agree with the federal government but prefer a shorter, more alarmist message to a lengthy, unwieldy one.

Thank you again for the opportunity to comment on these proposed changes. We would be happy to answer questions and participate in any rule-drafting discussions.

Best regards,

Steve Brashear  
Chairman & CEO  
Great Northern Cannabis, Inc.

**From:** Troy Foley  
**To:** [CED AMCO REGS \(CED sponsored\)](#)  
**Subject:** Public Comment regarding proposed changes to 306.7xx  
**Date:** Wednesday, August 23, 2017 3:30:11 PM

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Members of the Marijuana Control Board,

The amendment to 306.7xx(b)(2) contains the phrase "excessive consumption," which is vague and undefined.

The amendment to 306.7xx(b)(5) contains the phrase " includes any object or character, including a toy, a cartoon character, or any other depiction that appeals to a person under 21 years of age," which I believe would be better phrased as "that is intended to appeal to a person under 21 years of age." This will mitigate the vagueness inherent in "any [thing] that appeals to a person under 21 years of age."

The amendment to 306.7xx(d)(2) restricts licensed establishments from conducting games or competitions, which I believe will be counterproductive to our industry in a very significant fashion in the event that on-site consumption is approved and introduced to our state. Games and activities while partaking in on-site consumption will likely be a significant factor in the proposed establishments.

The amendment to 306.7xx(e) includes numerous phrases, which is in stark contrast to the alcohol industry's most common three word warning of "Please drink responsibly." While I do not take issue with any of the statements required, I do believe a more concise warning label in a smaller display will not have significant negative consequences to the public.

Thank you for your consideration,

Troy Foley  
Owner, Foley's Irish Green  
License #: 12825

**From:** Alaska Online Public Notices  
**To:** [Smith, Jedediah R \(CED\); CED AMCO REGS \(CED sponsored\)](#)  
**Subject:** New Comment on Marijuana Control Board proposed regulations--changes to financial interest in marijuana business and restrictions on advertising  
**Date:** Tuesday, September 05, 2017 12:41:58 PM

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A new comment has been submitted on the public notice [Marijuana Control Board proposed regulations--changes to financial interest in marijuana business and restrictions on advertising](#).

**Submitted:**

9/5/2017 12:41:54 PM

Bruce Wall  
[btwall@msn.com](mailto:btwall@msn.com)

Unknown location  
Anonymous User

**Comment:**

It appears that the current language in 3 AAC 306.360, "A sign may be placed in the retail marijuana store's window or attached to the outside of the licensed premises." intends to reduce the visual impact of these signs. If that is the case, I suggest strengthening the language as follows:

3 AAC 306.7xx. Restriction on advertising of a marijuana business

(a) A licensed marijuana business may have not more than three signs, visible to the general public from the public right-of-way. A sign may only be placed in the marijuana business' window or attached flush to the outside wall of the licensed premises. The size of each sign may not exceed 4,800 square inches.

This would prevent licensees from placing signs so that they project above the roofline or away from the building with only a minimal attachment to the premise.

Bruce Wall  
[btwall@msn.com](mailto:btwall@msn.com)  
465 W Redoubt Ave Apt 207  
Soldotna, AK 99669

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You can review all comments on this notice by [clicking here](#).

[Alaska Online Public Notices](#)

Public Comment - Percentage based lease arrangements 3 AAC 306.015(e)(B)(i)

As you know, current regulations allow a person (who is not a licensee) to receive rent on a percentage lease/rent agreement for property leased to a licensee. Many landlords and building owners, including myself, have relied upon this law as it is currently written when investing money and forming business relationships.

The proposed regulation to remove this language and therefore remove this option will create a heavy burden on those who have relied upon it and have already made investments and decisions based on it. Our group has personally invested \$250,000.00 and would create a financial hardship as we would be forced to repay the funds from our personal pockets with no reimbursement from our original investment.

It is extremely difficult to build a business on a foundation that constantly shifts. I urge you, as the group of individuals tasked with formulating the regulations that govern this industry, to keep this regulation in its current form and continue to allow percentage based lease arrangements. This provision was included in the regulations for a reason; this was a way for marijuana business start-ups to fund their new business and get off the ground since no outside ownership is allowed and banks won't finance marijuana businesses.

If you do decide to remove this exception from the definition of direct or indirect financial interest, then I would like to strongly encourage that you provide for some sort of grandfather right for those businesses who have already been approved for licensure by you, the Board, and have already been operating under this type of lease arrangement.

Respectfully,

Kelly Wilmes

Managing partner.

TOPROK LLC.





Public Comment - Percentage based lease arrangements 3 AAC 306.015(e)(B)(i)

As you know, current regulations allow a person (who is not a licensee) to receive rent on a percentage lease/rent agreement for property leased to a licensee. Many landlords and building owners, including myself, have relied upon this law as it is currently written when investing money and forming business relationships. The proposed regulation to remove this language and therefore remove this option will create a heavy burden on those who have relied upon it and have already made investments and decisions based on it.

Because of the down turn in Alaska's economy making this investment for Scott Young and myself was a tough decision to make. But because we both were acquainted with the owners, and because of the caliber of our investment group, we both decided to make the investment. It is extremely difficult to build a business on a foundation that constantly shifts. I urge you, as the group of individuals tasked with formulating the regulations that govern this industry, to keep this regulation in it's current form and continue to allow percentage based lease arrangements. This provision was included in the regs for a reason; this was a way for marijuana business start-ups to fund their new business and get off the ground since no outside ownership is allowed and banks won't finance marijuana businesses.

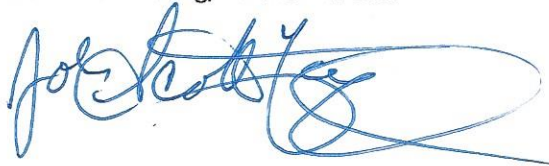
If you do decide to remove this exception from the definition of direct or indirect financial interest, then I would like to strongly encourage that you provide for some sort of grandfather right for those businesses who have already been approved for licensure by you, the Board, and have already been operating under this type of lease arrangement.

Sincerely,

Todd Zietlow / Partner YZ LLC.

A handwritten signature in blue ink, appearing to read 'Todd Zietlow', with a stylized flourish at the end.

John Scott Young/Partner YZ LLC.

A handwritten signature in blue ink, appearing to read 'John Scott Young', with a large, sweeping flourish at the end.