



MEMORANDUM

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

DATE: November 14, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Require
Corporate Bylaws; Only Licensed
Business on a Lease; Removal of
“Affiliates”

Require Corporate Bylaws

Summary: Limited liability companies are required to submit their operating agreement, and staff has at times found information in some operating agreements that indicate the need for additional licensees. The operations of an entity can relate to compliance with statutory and regulatory requirements. This regulations project amends 3 AAC 306.020(b)(3)(C) to require license applicants who are corporations to submit their corporate bylaws.

Recommendation: Put out for public comment.

Only Licensed Business on a Lease

Summary: The issue of multiple businesses on the lease for one licensed premises has come up in the past, most recently with AK Slow Burn Cannabis Outlet (#10898), a standard cultivation facility approved at the July meeting. If a non-marijuana business or entity is listed on the lease as having access to the licensed premises, then this other business/entity has access to marijuana without being a licensee. While at the time of licensing, the other business/entity may be owned by the same person/entity who is being licensed, there is no guarantee that that will always be the case. The licensee may sell the second business/entity to another without notice to or authorization by the board (which would not be required), and then some number of unlicensed persons would have access to the licensed premises.

In order to ensure that licensees are fully accountable for tracking all marijuana from seed to sale, the licensee should have sole possession of their licensed premises. This regulations project changes 3 AAC 306.020(b)(9) to require the applicant to have sole right to possession of the proposed licensed premises, so that no other entity or business may be listed on the lease as having a right to access the premises.

Recommendation: Put out for public comment.

Removal of “Affiliates”

Summary: The regulations define “affiliate” as “a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, a partnership, limited liability company, or corporation subject to this chapter.” License applications are required to include information about “each proposed licensee and each affiliate of each proposed licensee” which indicates that the regulations consider affiliates to be different from licensees. However the regulations also state that "licensee" means each individual named in an application that complies with this section, and includes a sole proprietor, all partners holding interest in a partnership, each member holding ownership interest in an LLC, and each owner of a corporation’s stock.

Staff struggles to understand the purpose of an “affiliate.” If an affiliate controls a partnership, LLC, or corporation subject to this chapter, shouldn’t they actually be a licensee? This regulations project removes the concept of affiliate, which is located only in two places in the regulations (3 AAC 306.020(b)(2) and 3 AAC 306.990(a)(1)) and would not seem to have any practical effect on the licensing process other than eliminating confusion.

The proposal also adds the following to the definition of “licensee”:

- General partners in a partnership, whether or not they hold any interest in the partnership.
- Managers and officers of limited liability companies, whether or not they hold any ownership interest
- Officers and directors of corporations, whether or not they own stock

These people will have some control and influence over the operation of a license and should be licensees. This is consistent with the alcohol program requirements.

Recommendation: Put out for public comment.

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

3 AAC 306.020 is amended to read:

(a) An applicant for a new marijuana establishment license must file an application as provided in 3 AAC 306.025, on a form the board prescribes, with the information and documents described in this section, along with the application fee and the annual license fee set out in 3 AAC 306.100, and the fingerprint cards and fees required by 3 AAC 306.055(a). The application must be initiated electronically; the completed application and fees may be filed electronically, or mailed or delivered to the director at the office of the board.

(b) An application for a new marijuana establishment license must include

(1) the name of the applicant and any business name the applicant will use for the proposed marijuana establishment, along with the applicant's state business license number issued under AS 43.70;

(2) the name, mailing address, telephone number, and social security number of each proposed licensee [AND EACH AFFILIATE OF EACH PROPOSED LICENSEE]; unless the context requires otherwise, "licensee" means each individual named in an application that complies with this section; an individual to be identified as a licensee under this section includes

(A) if the applicant is an individual or a sole proprietor, the individual or sole proprietor;

(B) if the applicant is a partnership, including a limited partnership, **each general partner and** each partner holding any interest in the partnership;

(C) if the applicant is a limited liability company, each member holding any ownership interest **and each manager**;

(D) if the applicant is a corporation, each owner of any of the corporation's stock, **each officer, and each director**; and

(E) if the applicant is a local government, an authorized official of the local government;

(3) for each applicant that is not an individual, the applicable documents and information as follows:

(A) for a partnership, including a limited partnership, the partnership agreement, the name of each general or managing partner, and a list of all partners with the percentage of ownership of each partner;

(B) for a limited liability company, the limited liability company agreement, and a list of all members with the percentage of ownership of each member;

(C) for a corporation, the certificate of incorporation, **the corporate bylaws**, the name of each corporate officer **and director**, and a list of all shareholders with the percentage of ownership of each shareholder;

(D) for a local government, a resolution of the governing body approving the application and designating an official responsible for the proposed marijuana establishment;

(4) for each person listed in compliance with (2) of this subsection, a statement of financial interest on a form the board prescribes;

(5) for each applicant that is not an individual, the name of the individual licensee or designated government official listed in the application under (2) of this subsection who is responsible for

(A) management of the marijuana establishment; and

(B) compliance with state laws;

(6) an electronic mail address at which the applicant agrees to receive any correspondence from the board before and after it receives a license; an applicant and a licensee must ensure that any electronic mail address provided to the board is current so that the board can contact the applicant or licensee at any time;

(7) the type of license the applicant is requesting;

(8) the address of the premises to include global positioning system (GPS) coordinates where the applicant intends to operate a marijuana establishment, and a detailed diagram of the proposed licensed premises; the diagram must show all entrances and boundaries of the premises, restricted access areas, and storage areas;

(9) the title, lease, or other documentation showing the applicant's sole right to possession of the proposed licensed premises; (Eff. 2/21/2016, Register 217; am __/__/____, Register____)

3 AAC 306.990(a)(1) is repealed. (Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217;am __/__/____, Register____)

Register____,____2018

COMMERCE, COMMUNITY AND EC. DEV.

Authority: