



## MEMORANDUM

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

DATE: May 15, 2017

FROM: Erika McConnell, Director

RE: Director's Report

### OPERATIONS

The license renewal notice was emailed to licensees on May 1 as required by 3 AAC 306.035(a). Ms. Oates provides more information in her licensing report.

The replacement handler permit card fee went into effect on May 1.

Our staffing request in the 2018 budget for two additional examiners and another office assistant continues to look positive. I have initiated a conversation with the Commissioner's Office regarding office space, as AMCO does not have the physical space to expand by three.

### LEGISLATION

- **SB 6: Industrial Hemp Production**

This bill will create, under the Division of Agriculture within DEC, an industrial hemp cultivation and manufacturing program. It specifically excludes cannabis and cannabis products with 0.3% or less THC from AMCO regulation.

SB 6 passed the Senate unanimously on April 10 and is currently in House Finance.

- **SB 63: Regulation of Smoking**

This bill affects any plant product or vapor product intended for inhalation. It proposes to impact AMCO in three primary ways:

1. Restricts smoking in an enclosed area inside a restaurant or bar, within 10 feet of an entrance to a bar or restaurant licensed under AS 04, or at a cigarette/e-cig retail store licensed under AS 04.11 to serve alcohol at an outdoor location
2. Does not restrict smoking at a business licensed under AS 17.38 that is in a freestanding building, though other restrictions are placed on marijuana businesses that may wish to allow onsite consumption via smoking or e-cigarette inhalation
3. Permits AMCO staff acting as peace officers to enforce laws enacted under this statute.

SB 63 passed the full Senate on March 27. After transmittal to the House, it has passed through Community and Regional Affairs and is currently in House Judiciary.

- **SB 76: Title 04 Rewrite**

It is now clear that the legislature will not take up the Title 04 rewrite this session. I will continue to participate in the Title 04 Rewrite Steering Committee, which is planning educational outreach during the interim.

## **AUDITS**

- FBI Audit of Criminal Justice Information Security (CJIS)--COMPLETED
  - Concern raised regarding fingerprint application
  - Concern raised regarding notification to applicant who's criminal history must be shared with board
- Legislative audit of MCB and ABC is currently underway
  - Auditors working in AMCO conference room through late May; preliminary report expected in the fall

## **TRAVEL AND CONFERENCES**

In mid-April, Chair Mlynarik, Assistant Attorney General Milks, and I attended a state regulator's Cannabis Summit in Olympia, Washington. We spent a day and a half discussing issues with the state regulators from Washington, Oregon, and Colorado. Notes from this meeting are currently being reviewed by the participants. I will distribute them when they are finalized. I felt, and I believe Ms. Milks and Chair Mlynarik will agree, that this meeting was extremely helpful for learning how other states have managed issues that we are just beginning to address, and also for making contacts with other regulators who will share their knowledge and experience with us. The group is planning regular meetings, with the next planned for September in Oregon. The states who have recently legalized recreational marijuana will be invited to attend.

## **REGULATIONS**

Attachment 1 to this report is a spreadsheet of all the regulations projects opened by the board and their current status. As you can see, some projects opened in June 2016 have not been worked on, and other projects voted by the board to go out for public comment in June 2016 have not yet been publicly noticed. With the onboarding of our local government specialist (Jed Smith) late last year, all regulations project work has been assigned to one person which will foster better organization and more efficient work.

Mr. Smith has reformatted the three projects that the board voted to go out for public comment (advertising requirements, space planning and layout, and labeling and packaging), but due to their subject matter and subsequent board discussions, we felt it necessary to double check that the board was still interested in moving forward with these three regulations. They are attached to this report as follows:

- Attachment 2: Advertising Requirements
- Attachment 3: Space Planning and Layout
- Attachment 4: Labeling and Packaging

## **SPECIFIC ISSUES**

- **Board Resolutions and Advisories**

In July of 2016, the board passed a resolution addressing initial plants brought into cultivation facilities. A draft of this resolution is Attachment 5 to this report. If the draft is acceptable to the board, we will post it to the website.

In March of this year, the board passed a resolution requesting the Department of Revenue to lower the tax on bud and flower sold to a manufacturing facility from \$50 per ounce to \$15 per ounce. Attachment 6 is a draft of this resolution. If the draft is acceptable to the board, I will send it to the Department of Revenue.

At the last meeting, the board instructed me to draft a board advisory regarding responding to notices of violation. Attachment 7 is a draft of this advisory for the board's consideration.

I would like to suggest that the board consider advisories on the following topics:

- Warning labels need to be verbatim
- Tailor application to license type—don't provide same info for multiple license types

- **Delegation**

The board's delegation of authority to the director should be documented. To that end, I have drafted Attachment 8 recording the delegation of authority to approve business name changes to the director, for the board's consideration. I plan to review the record and bring additional delegation documents to the board in the near future.

- **Pot Luck Events**

You may have read in the paper that Pot Luck Events, a marijuana social club in Anchorage, closed its doors on April 20. Earlier that week we had an impromptu discussion with one of the owner/managers of Pot Luck Events. We issued a letter informing them of the statutes and regulations they were violating, and they chose to close their doors. The letter is Attachment 9 to this report.

- **Promotional Events**

Many retail stores planned promotional events for 4/20/17. Evaluation of advertising and planned events illuminated a lack of specificity in 3 AAC 306.360(d). Mr. Hoelscher provides more detail in his enforcement report.

- **Clarify Role of Local Governments**

The Board should be advised that some local governments are not verifying the separation distance required under 3AAC 306.010(a), and therefore not protesting license applications based on sensitive uses. In conversations with local governments, most assume that once a completed application has been submitted, that distance has been verified, as have other regulatory requirements of 3 AAC 306.

Section 4 of MJ-00 requires, "under penalty of unsworn falsification" that an applicant certify the proposed premises is not within 500 feet of a school ground, recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility, as set forth in 3 AAC 306.010(a).

If the Board is seeking independent verification beyond the MJ-00 form, this should be expressly communicated to local governments when the completed application is sent for their review.

However, it should also be noted local governments are under no statutory or regulatory requirements to verify the state regulations, and it has been expressed to AMCO staff that some

local governments do not have the capacity to perform this function. Additionally, direction on how to measure 'shortest pedestrian route' should be considered.

There is a second local government issue that the board should contemplate: local government jurisdiction.

- AS 17.38.210(b): "A local government may enact ordinances or regulations not in conflict with this chapter or with regulations enacted pursuant to this chapter, governing the time, place, manner, and number of marijuana establishment operations."

In situations where a city exists within a borough, the borough maintains land use regulatory authority, according to AS 29.35.180. The city may have other relevant authorities, such as police powers, building regulations, etc. Thus both the borough and the city may have ordinances/regulations relating to various facets of marijuana businesses.

- AS 17.38.210(m): "Except as provided in AS 29, the exercise of the powers authorized by this section by a borough may be exercised only on a nonareawide basis. In this subsection, "nonareawide" means throughout the area of a borough outside all cities in the borough."

Except where specifically provided in AS 29, such as for planning and platting powers, the borough's authority wouldn't apply inside of cities, so the regulations can't ignore cities and give all protest power over marijuana applications to boroughs.

- AS 17.38.900(7) and (8): "(7) "local government" means both home rule and general law municipalities, including boroughs and cities of all classes and unified municipalities; (8) "local regulatory authority" means the office or entity designated to process marijuana establishment applications by a local government;"
- 3 AAC 306.010(c): "The board will not issue a marijuana establishment license when a local government protests an application under 3 AAC 306.060 on the grounds that the applicant's proposed licensed premises are located in a place within the local government where a local zoning ordinance prohibits the marijuana establishment. unless the local government has approved a variance from the local ordinance."

Generally, AMCO defers to the city for protests on license applications within city boundaries. However, unless the borough has specifically delegated land use regulation to a city under AS 29.35.250(b), the borough must have the right to protest under this section of regulation on any land use regulation challenges.

- 3 AAC 306.025(b): "As soon as practical after initiating a new marijuana license application, the applicant must give notice of the application to the public by... (3) submitting a copy of the application on the form the board prescribes to (A) the local government;"
- 3 AAC 306.025(d)(2): "When the director receives an application for a marijuana establishment license... the director shall immediately give written notice to; (1) the applicant; (2) the local government with jurisdiction over the applicant's proposed licensed premises;"

- 3 AAC 306.035(c): “If the director determines that the renewal application is complete, the director shall give written notice of a renewal application to (1) the applicant; (2) the local government in the area in which the applicant's proposed licensed premises are located;”

The phrasing for notice is inconsistent and changes throughout the regulations from “local government” to “local government with jurisdiction” to “local government in the area in which...licensed premises are located.”

Staff recommends opening a regulations project to clarify that whichever local government has the authority over any particular matter relating to marijuana establishments be allowed to protest on that matter, and that both the applicant and the director be required to notice all applicable local governments.

Note: As a courtesy, staff has begun sending notification of a completed application to the borough when the proposed establishment is within a city in a borough.

- **Public Objections**

Please see Attachment 10 for a description of this issue from Mr. Smith.

## **NEXT MEETINGS**

The next MCB meeting is scheduled for July 12-13 in Fairbanks.

The September meeting will be held in Nome on September 14-15.

Two board members responded that moving the December meeting to November was fine. The November meeting is tentatively set for November 14-15.

## **STATISTICS**

Total sales for last three months, per month:

February	\$1,406,287
March	\$2,571,802
April	\$2,864,458

Total 2017 sales, through May 4, 2017: \$8,065,435.53

Total sales from inception to May 4, 2017: \$9,735,783.04

## MCB REGULATIONS PROJECTS

DOL Project Number	Topic	Date Opened by MCB	Current Status	Date Adopted by MCB	Effective Date
JU2015200669	Omnibus Regulations		Adopted by board; filed with Lt Gov	11/20/15 Pg 23	2/21/16
JU2016200436-1	Conduct of board meetings in alcohol	2/11/16 pg 2	Adopted by board; filed with Lt Gov	7/6/16	12/28/16
JU2016200436-2	[Reserved for anticipated future work]				
JU2015201028	Onsite consumption	2/11/16	Board voted not to continue project 2/2/17; Board reopened 3/7/17		
JU2016200617	Handler permits	4/27/16 pg 9	Out for public cmt 9/7/16; duplicated by Prj#165		
JU2016200604	Advertising requirements	6/9/16 pg 22	Voted out for public comment 7/8/16; not yet put out		
JU2016200611	Testing	6/9/16 pg 22	Adopted by board	4/5/17	
JU2016200610	Space planning and layout	6/9/16 pg 22	Voted out for public comment 7/8/16; not yet put out		
JU2016200606	Labeling and packaging	6/9/16 pg 22	Voted out for public comment 7/8/16; not yet put out		
JU2016200612	Video surveillance	6/9/16 pg 22	No work on this yet		
JU2016200609	Participation of outside entities – residency requirements	6/9/16 pg 22	No work on this yet		
JU2016200605	Waste disposal	6/9/16 pg 23	No work on this yet		
JU2016200613	Retail store notices	7/8/16 pg 16	Adopted by board	4/5/17	
JU2016200837	Requiring fingerprints for new owners	9/7/16	Adopted by board	4/5/17	
JU2016200838	What happens to existing licenses if local gov opts out by ordinance	9/7/16	Adopted by board	4/5/17	
JU2016200839	DEC approval before acceptance of license application (food safety permit)	9/7/16	Adopted by board	4/5/17	
	Advertisement; definition of “advertisement” and “logo”	12/7/16	Board took no action on proposal (2/2/17)		
JU2017200165	Transportation	2/2/17	Voted out for public comment 3/7/17; comment period ended 5/5/17; on 5/15/17 agenda		
	Revocation of handler’s permit				
	In-house quality control testing	2/2/17	On 5/15/17 agenda for initial consideration		
	Random sampling				
	Waste disposal #2				
	Plant count for new cultivators	4/5/17	No work on this yet		
	Separation distance				
	Kief				

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

3 AAC 306.360 is amended to read:

(e) All advertising for marijuana or any marijuana product must contain each of the following warnings:

**(1) “For adult use only, 21 and older”;** [MARIJUANA HAS INTOXICATING EFFECTS AND MA BE HABIT FORMING AND ADDICTIVE.]

**(2) “Do not operate a vehicle or machinery after consuming marijuana”**  
[“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 BE 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.”.] (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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(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.925 **Shared use spaces in marijuana establishments** (a) A licensed marijuana establishment may share support spaces with other non-licensee tenants of the same building provided that;

(1) No marijuana or marijuana products may be cultivated, processed, stored, or sold in areas not under the direct and exclusive control of the licensee and;

(2) Non-licensed tenants are not able to access the licensed premises via the shared-use space.

(b) Multiple marijuana establishments may share support spaces provided that;

(1) No marijuana or marijuana products may be cultivated, processed, stored, or sold in areas not under the direct and exclusive control of each licensee and;

(2) Employees of one licensee may not have access to an adjacent licensed premises via the shared space unless that employee is authorized to access both premises. (Eff. \_\_/\_\_/\_\_\_\_, Register\_\_\_\_)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS17.38.070	AS 17.38.190	AS 17.38.900
	AS17.38.121		



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

3 AAC 306.310 is amended to read:

3 AAC 306.310. **Acts prohibited at retail marijuana store.** (a) A licensed retail marijuana store may not sell, give, distribute, deliver, or offer to sell, give, distribute, or deliver, marijuana or a marijuana product

- (1) To a person under 21 years of age;
- (2) To a person that is under the influence of an alcoholic beverage, inhalant, or controlled substance;
- (3) That is not labeled and packaged as required in 3 AAC 306.345 and
  - (A) 3 AAC 306.470 and 3 AAC 306.475; or
  - (B) 3 AAC 306.565 and 3 AAC 306.570;
- (4) In a quantity exceeding the limit set out in 3 AAC 306.355;
- (5) Over the Internet; a licensed retail marijuana store may only sell marijuana or marijuana product to a consumer who is physically present on the licensed premises;
- (6) After the expiration date shown on the label of **a perishable** [THE MARIJUANA OR] product (Eff. 2/21/2016, Register 217; am \_\_/\_\_/\_\_\_\_, Register\_\_\_\_)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS17.38.070	AS 17.38.190	AS 17.38.900
	AS17.38.121		



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Commerce, Community,  
and Economic Development**

ALCOHOL & MARIJUANA CONTROL OFFICE

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Anchorage, AK 99501  
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**Marijuana Control Board**

**Resolution Regarding Number of Acceptable Plants at Preliminary Inspection**

*Adopted (passed 3-2) on July 14, 2016*

WHEREAS, a diverse inventory of plants, ranging in both size/age and genetic characteristics is essential to the success of a licensed cultivation facility; and

WHEREAS, Ballot Measure 2 allows an adult 21 or over (acting as an agent of a licensee) to receive any number of seeds or immature plants from another adult 21 or over.

RESOLVED, it is the policy of the Marijuana Control Board that:

- (1) Upon preliminary inspection, a licensee may have any number of immature (non-flowering) plants on the premises.
- (2) Any plants on the premises at preliminary inspection must be tagged and tracked, per 3 AAC 306.435.
- (3) Twelve additional immature plants of any size, designated and used as mother plants, may also be found on the premises during preliminary inspection.

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Peter Mlynarik  
Chair  
Marijuana Control Board

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Erika McConnell  
Director  
Alcohol & Marijuana Control Office



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**Marijuana Control Board**

**Resolution Requesting Restructuring of Tax on Flower Sold to Manufacturers**

*Adopted (passed 3-2) on March 7, 2017*

WHEREAS, it is to the State of Alaska's economic benefit to receive tax revenue from all marijuana cultivated by licensed facilities; and

WHEREAS, in a mature industry, it is economical for cultivators to sell lower quality flower to product or concentrate manufacturers at a price lower than supports the \$50 per ounce tax rather than destroy the flower; and

WHEREAS, per 15 AAC 61.100(a)(2), the remainder of the plant is taxed at \$15 per ounce.

RESOLVED, the Marijuana Control Board requests that the State of Alaska Department of Revenue restructure the marijuana tax to reduce the tax on flower sold to product or concentrate manufacturers from \$50 per ounce to \$15 per ounce, either by regulation or by seeking a statutory change from the Alaska Legislature.

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Peter Mlynarik  
Chair  
Marijuana Control Board

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Erika McConnell  
Director  
Alcohol & Marijuana Control Office



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**Marijuana Control Board Advisory  
Responding to Notice of Violation**

**Relevant Statute(s)/Regulation(s):**

3 AAC 306.805(d)

The director, an enforcement agent, an employee of the board, or a peace officer acting in an official capacity may issue a notice of violation if an inspection report or other credible information shows a marijuana establishment is in violation of AS 17.38, this chapter, or other law relating to marijuana. The notice of violation must be delivered to the marijuana establishment at its licensed premises, and to the board. The notice must describe any violation, and cite the applicable statute, regulation, or order of the board. A marijuana establishment that receives a notice of violation may respond to the notice orally or in writing, and may, not later than 10 days after receiving the notice, request an opportunity to appear before the board. A notice of violation may be the basis of a proceeding to suspend or revoke a marijuana establishment's license as provided under 3 AAC 306.810. [underline added]

**Advisory:**

The Marijuana Control Board notes that licensee response to a notice of violation is optional as the term "may respond" is used in the regulation. This is different from notices of violation issued to alcohol licensees, where the licensee must respond to a notice of violation (3 AAC 304.525(a)(1)(B)).

**The Marijuana Control Board advises and encourages licensees to respond to notices of violation.** Notices of violation are a form of communication between the board and the licensee. It is very important that this communication go both ways, from board to licensee and from licensee to board. The board is very interested in ensuring that a licensee understands how they violated statute and regulation, and that the licensee has a plan for how they will prevent such a violation from occurring a second time.



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**Marijuana Control Board**

**Delegation 2017-04-04a**

**Business Name Changes**

*Adopted (passed 5-0) on April 4, 2017*

In accordance with AS 17.38.150, the Marijuana Control Board delegates to the Director the authority to approve business name changes for marijuana licensees under 3 AAC 306.100(c).

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Peter Mlynarik  
Chair  
Marijuana Control Board

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Erika McConnell  
Director  
Alcohol & Marijuana Control Office



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April 19, 2017

Dear Pot Luck Events:

In July 2015, this office sent letters to Pot Luck Events (PLE) and other so-called marijuana social clubs, informing them that their businesses were illegal and they must cease operating. Some of the recipients did cease operating but you did not.

A lot has happened since then. The governor appointed a marijuana control board and the board adopted a comprehensive set of regulations covering everything from cultivation to exit packaging. 3 AAC 306. Hundreds of Alaskans have invested time and money developing cannabusinesses that are compliant with the law. Dozens of cultivation and retail establishments have opened and are operating. And, the law is considerably more developed than it was two years ago. Today, I can say with confidence that your business model is not supported by the law and you must cease operating as you have been. It is AMCO's hope and expectation that you will use this as an impetus to redirect your vision and resources toward lawful operations.

Here is the authority that identifies your business model as illegal:

1. Alaska's recreational marijuana statute provides for only four kinds of legal marijuana businesses (cultivator, producer, tester, and retail); PLE's is not one of them. AS 17.38.070.
2. PLE collects membership fees and cover charges and in exchange, provides members and guests with opportunities to consume marijuana freely on the premises. The Alaska Attorney General has issued a formal opinion that says these practices are illegal because they violate AS 17.38. The opinion can be found at [http://www.law.alaska.gov/pdf/opinions/opinions\\_2016/16-004\\_AN2016101562.pdf](http://www.law.alaska.gov/pdf/opinions/opinions_2016/16-004_AN2016101562.pdf)
3. The Alaska Controlled Substances Act makes it illegal to be in possession of more than an ounce of marijuana. AS 11.71.050(a)(2)(E). PLE likely violates this law by being in control of the samples it distributes, regardless of who brings the samples onto the premises.



4. The Alaska Controlled Substances Act also makes it illegal to possess any amount of marijuana with the intent to deliver. AS 11.71.050(a)(1). PLE's business model clearly contemplates delivery of marijuana to people on its premises.
5. The federal Controlled Substances Act makes any possession, transfer, and selling of marijuana illegal. 21 U.S.C. § 812; 21 U.S.C. § 841(a); 21 U.S.C. § 844(a). Again, possession and transfer of marijuana are core components of PLE's business model.
6. The U.S. Department of Justice has advised that federal officials maintain their authority to shut down marijuana businesses, but they are less likely to enforce the prohibitions on marijuana where states have adopted robust regulatory schemes. James M. Cole, Deputy Attorney General, U.S. Dept. of Justice, "Memorandum for all United States Attorneys: Guidance Regarding Marijuana Enforcement" at 1-2 (Aug. 29, 2013). We have done so, but you operate outside our regulatory scheme. PLE is vulnerable to federal enforcement. And unless the board uses its enforcement powers to issue violations for your business, Alaska's entire regulatory scheme could attract unwanted attention from the federal authorities.

For all of these reasons, PLE's business is illegal and it must cease operating. I expect to activate the board's enforcement powers under AS 17.38.131 as soon as practicable. You should also know that we have been working with APD to develop an enforcement plan.

Sincerely,



Erika McConnell  
Director

CC: Peter Mlynarik, Chair, Marijuana Control Board  
Chris Hladick, Commissioner, Department of Commerce, Community, and  
Economic Development  
Christopher Tolley, Chief, Anchorage Police Department  
Bill Falsey, Anchorage Municipal Attorney  
Robinson Garcia, Property Owner of 420 W. 3<sup>rd</sup> Avenue



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**MEMORANDUM**

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

DATE: May 15, 2017

THRU: Erika McConnell, Director

FROM: Jed Smith, Local Government Specialist

RE: Proposed regulations project-  
Public participation/ application  
procedures

The application procedure and the public participation regulations are in conflict and staff recommends the Marijuana Control Board clarify regulation intent regarding public objections to marijuana license applications.

Under 3 AAC 306 and the license application process, a licensee is required to post notice as soon as the marijuana license application is initiated. That notice gives the public 30 days to object to the license. However, completed applications are not easily available to the public for review until about one week before a Marijuana Control Board meeting. In an analysis of 118 applications, the average time between when the notice was posted and when the application was completed was 115 days, and the longest was 333 days. Marijuana license applicants are required to post notice of the application in the following manner:

[3 AAC 306.025](#) (b) As soon as practical after initiating a new marijuana license application, the applicant must give notice of the application to the public by

(2) publishing an announcement once a week for three consecutive weeks in a newspaper of general circulation in the area; in an area where no newspaper circulates, the applicant must arrange for broadcast announcements on a radio station serving the local area where the proposed licensee seeks to operate twice a week for three successive weeks during triple A advertising time; the newspaper or radio notice must state

(D) a statement that any comment or objection may be submitted to the board;

[3 AAC 306.065. Public participation](#) A person may object to an application for a new license, renewal of a license, or transfer of a license to another person by submitting a written statement of reasons for the objection to the board and the applicant not later than 30 days after notice of the application, but not later than the deadline for objections stated in a posted or published notice of the application. The objection must be sent to the applicant at the mailing address or electronic mail address provided in the notice of application. If the



board determines to conduct a public hearing under this section, an interested person may give oral testimony at the public hearing.

These two regulations present a problem. If a member of the public wishes to object to a license application, that objection must come in during the very early stages of initiation of an application, before the license application is complete or a detailed operations plan has been formalized, or perhaps even conceptualized.

This process contrasts with the alcohol statute 04.11.470 , which does not contemplate a specific timeline with which the public may file an objection; only that the board shall consider the testimony at the time it considers the application:

A person may object to an application for issuance, renewal, transfer of location, or transfer to another person of a license or for issuance of a permit, by serving upon the applicant and the board the reasons for the objection. The board shall consider the objections and testimony received at a hearing conducted under AS 04.11.510(b)(2) when it considers the application. An objection and the record of a hearing conducted under AS 4.11.50(b)(2) shall be retained as part of the board's permanent record of it's review of the application.

It is reasonable to believe that an objection that comes in during the 30 day notice, but prior to a completed application has merit, perhaps due to proximity of a sensitive use. But it is more likely that such an objection would be based merely on the notion that anything about a licensed marijuana establishment is offensive. Such argument is “arbitrary, capricious, and unreasonable.” Additionally, the strict timeline to submit a public objection in writing provides a disincentive for the public to engage constructively with the license applicant or AMCO.

AMCO staff suggests the following:

Amend 3 AAC 306.065 to eliminate the phrase “not later than 30 days after notice of the application, but not later than the deadline for objection stated in a published notice of the application.”

This would make the public participation regulation more closely aligned with the alcohol regulations, and would also provide clarity for the applicant on how the public can be involved. Many licensees are proactively contacting their local governments already. And the public is often able to object to a municipal license. However, in many cases, there is either no local government licensing process, or the local government protest process occurs only after the completed application is received, well after the 30 day deadline to object has passed.