



MEMORANDUM

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

DATE: July 12, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Onsite
Consumption

Summary: At the March 7, 2017, MCB meeting, the board voted to open a regulations project on onsite consumption. The board agreed to send language proposals to staff no later than March 20. The direction given to staff was to combine the language from various board members into a single proposal for board consideration at the April meeting.

The director received three proposals. The first proposal was received before the deadline, from Board Member Jones. Staff formatted Mr. Jones' proposal into regulations format. His proposal eliminates all references to onsite consumption in the regulations. In his email explaining his proposal, Mr. Jones indicated he supported a two-year moratorium on onsite consumption, due to uncertainty at the federal level, the health hazards of secondhand smoke exposure, and the desire to learn from the experience of other states that are grappling with this issue.

The second proposal, from Board Member Emmett, was received after the March 20 deadline and is identical to the previous regulations project on this issue. Mr. Emmett expressed the desire to use this language as a starting point for discussion.

The third proposal, from Board Chair Mlynarik, was received after the March 20 deadline, and while based on the language of the previous regulations project, contains changes that would limit onsite consumption to marijuana products only (no smoking or vaping).

My recommendation is to move and discuss Mr. Jones' proposal first, as his proposal was provided within the timeframe set by the board. If the board votes to send Mr. Jones' proposal out for public comment (with or without amendment), then neither of the other two proposals need be discussed.

If the board votes not to send Mr. Jones' proposal out for public comment, the board should discuss whether to work from Mr. Emmett's draft or Chair Mlynarik's draft.

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

3 AAC 306.305 (a)(4) is repealed:

(4) repealed ___/___/___ (Eff. 2/21/2016, Register 217, am.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

3 AAC 306.310 (b)(2) is amended to read:

(2) allow a person to consume marijuana or a marijuana product on the retail marijuana store's licensed premises, [EXCEPT AS PROVIDED IN 3 AAC 306.305(A)(4)] (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

3 AAC 306.810 (b)(6) is amended to read:

(6) used the licensed premises for an illegal purpose including gambling, possession or use of narcotics [OTHER THAN MARIJUANA], prostitution, or sex trafficking. (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

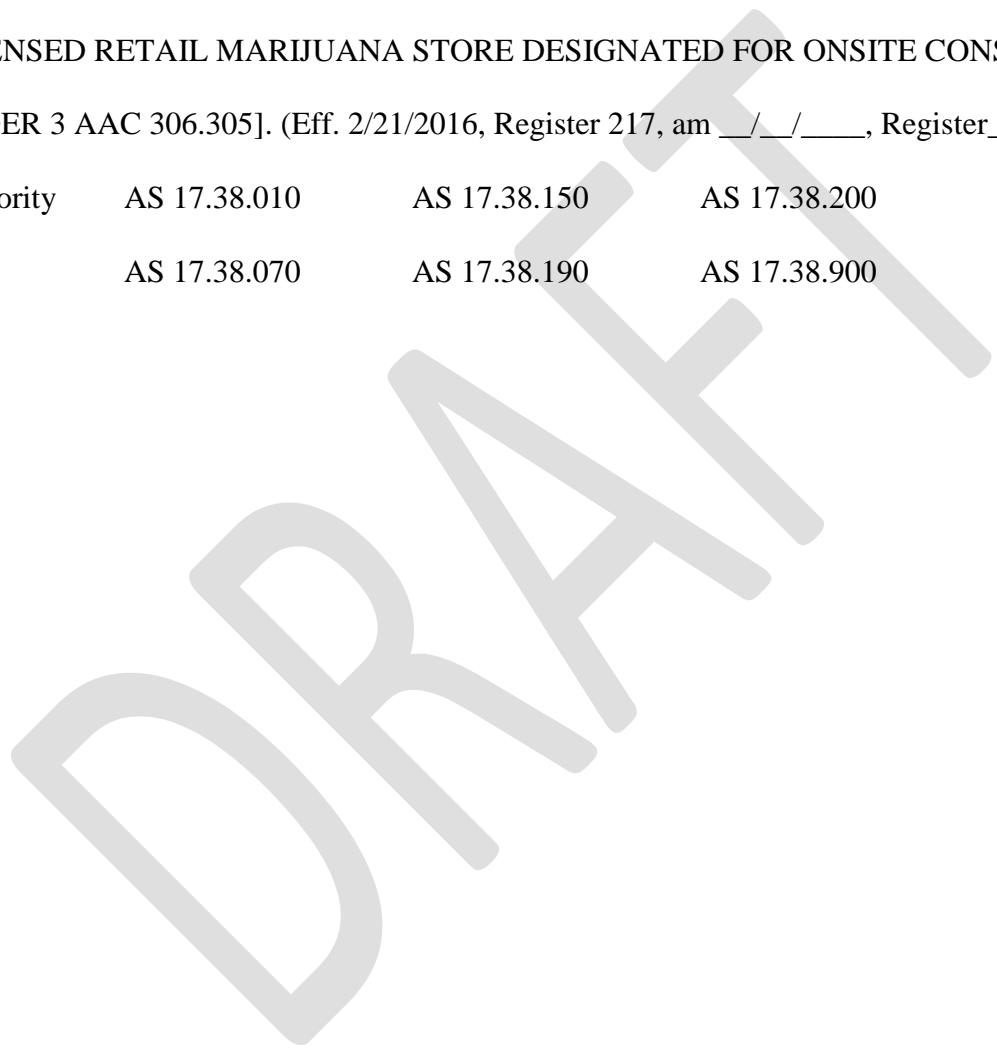
3 AAC 306.990(a)(6) is amended to read:

(6) "in public" (A) means in a place to which the public or a substantial group of people has access;

(B) [EXCEPT AS PROVIDED IN (C) OF THIS PARAGRAPH,] includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

[(C) DOES NOT INCLUDE AN AREA ON THE PREMISES OF A LICENSED RETAIL MARIJUANA STORE DESIGNATED FOR ONSITE CONSUMPTION UNDER 3 AAC 306.305]. (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



From: [Loren Jones](#)
To: [Chambers, Sara C \(CED\)](#); [Dinegar, Harriet C \(LAW\)](#)
Cc: [Oates, Sarah D \(CED\)](#)
Subject: Onsite Consumption
Date: Friday, March 17, 2017 8:52:22 AM

As I understood the result of last meeting we had until March 20 to provide our comments or ideas related to opening a regulation project related to onsite consumption. To that end I will detail my comments and suggestions below. I am also assuming that these will be passed on to the new Director when she starts. I am doing this on my iPad so hope the formatting comes thru.

Step 1:

On March 1, 2017 a letter was sent to Peter Mlynarik from Emily Nenon and was included in our March 7 packet. That letter requested that the Board set a two year moratorium on dealing with and approving on-site consumption. The letter does a good job at justifying why this would be a good step.

I would recommend that language be drafted to institute such a moratorium by regulation and presented to the Board.

Step 2:

If a moratorium is not acceptable to the Board then I would recommend that language be drafted to do the following:

Repeal 3 AAC 306.305 (4).

Amend 3 AAC 306.310 (b)(2) so it would read: "(2) allow a person to consume marijuana or a marijuana product on the retail marijuana store's licensed premises." Deleting : EXCEPT AS PROVIDED IN 3 AAC 306.305 (a)(4)

Amend 3 AAC 810 (b)(6) by deleting the words "other than marijuana" from this section.

Amend 3 AAC 306.990 (a)(6)(B) as follows:

Delete all caps. (B) EXCEPT AS PROVIDED IN (C) OF THIS PARAGRAPH,

Delete 3 AAC 306.990 (a)(6)(C) in it's entirety.

The above (Step 1 and Step 2) constitutes my recommendations and what I would like to see presented to the Board when this topic is part of the agenda. If neither of these suggestions pass the Boards scrutiny then I would suggest that any regulations presented to the public for comment clarify onsite consumption along these issues.

A. Consumption can only occur in a retail marijuana establishment if they are in a stand alone building. Similar to what is in legislation before the Legislature on smoke free work and public places. Couple this with proper ventilation rules and requirements.

B. Restrict a retail store that is approved for onsite consumption from allowing consumption of tobacco and alcohol. This needs to be very clear. Signs about this prohibition need to be required.

C. There needs to be some restriction so that consumption is a minor part of the business. This could be done (like alcohol) by requiring a percentage of sales must be from retail sales other than for consumption? 80% or 90%? An addition and/alternate would be to restrict the floor space for onsite consumption to 25% or less.

D. No onsite entertainment may be provided such as TV's, pool tables, dart games, etc. This space is to try marijuana or a marijuana product and then to leave.

E. Consumption hours should be limited to only a portion of the hours the retail marijuana establishment is open. Something like so sales for consumption before 1 PM or after 9PM.

F. All signage required in the retail marijuana establishment be required to be posted in the on-site consumption area. (3 AAC 306.360 (e) covers most of these.

G. Continue the prohibition about bringing in product not sold at that retail location. Not allowed to bring their own.

H. Be certain we are clear about penalties and/or fines for any violations. Since this is an endorsement needs to be clear what violation threaten the endorsement and what might also threaten the retail establishment license.

I. Make certain that any restriction established by a local government are acceptable and are valid reasons a local government can protest the issuance of the endorsement for on-site consumption.

Again I am doing this on my iPad so hope format is clear. I have proof read this twice so hope I did not misspell or missed being clear on some comment.

Loren

Sent from my iPad

Brandon Emmett Draft

Chapter 306. Marijuana Control Board

3 AAC 306.365. Onsite consumption endorsement for retail marijuana stores. (a) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the documents and endorsement fee set out in this section.

(b) An application for a new or renewal onsite consumption endorsement must include

(1) the name of the applicant and DBA and license number of the retail marijuana store requesting the endorsement, along with the applicant's state business license number issued under AS 43.70;

(2) the applicant's operating plan, in a format the board prescribes, describing to the board's satisfaction the marijuana retail store's plans for

(A) security;

(B) ventilation. Ventilation plans for consumption that includes inhaling must be signed and approved by a licensed mechanical engineer;

(C) isolation of the marijuana consumption area from other areas of the retail marijuana store;

(D) disposal or child resistant packaging of unconsumed marijuana; and

(E) preventing introduction into the consumption area of marijuana or marijuana products not sold by the retail marijuana store.

(3) a detailed premises diagram showing the location of

(A) serving area or areas;

(B) ventilation exhaust points if applicable;

(C) doors, windows or other exits;

(D) access control points; and

(E) adequate separation from non-consumption area(s) of the marijuana retail store.

(4) An application for a new on-site consumption endorsement must meet the requirements of 3 AAC 306.025(b) and include in that notice the license number of the retail marijuana establishment requesting the endorsement.

(c) The non-refundable fee for a new or renewal onsite consumption endorsement is \$1000.

(d) A retail marijuana store that is issued an onsite consumption endorsement under this section is authorized to sell marijuana and marijuana product to patrons for consumption on the licensed premises in an area separated from the remainder of the premises by a secure door and containing a separate ventilation system. The holder of a marijuana retail store onsite consumption endorsement may sell for consumption on the premises

- (1) marijuana bud or flower in quantities not to exceed one gram to any one person in a single transaction;
- (2) edible marijuana products in quantities not to exceed 10mg of THC to any one person in a single transaction;
- (3) marijuana concentrates intended for inhalation in quantities not to exceed .25 grams to any one person in a single transaction;
- (4) food or beverages not containing marijuana; 3

(e) The retail marijuana store holding an onsite consumption endorsement under this chapter must

- (1) destroy all unconsumed marijuana left abandoned or unclaimed in the marijuana consumption area in accordance with their operating plan and 3 AAC 306.740;
- (2) maintain a ventilation system that directs air from the onsite consumption area to the outside of the building through a filtration system adequate to reduce odor;
- (3) restrict access to the onsite consumption area to persons not less than 21 years of age;
- (4) monitor patrons for overconsumption;
- (5) provide written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in the onsite consumption area at no cost to patrons ; and
- (6) assure that consumers purchasing marijuana or marijuana product sold for consumption in the marijuana consumption area have access to the label for that marijuana or marijuana product as required in 3 AAC 306.345.

(f) The holder of a marijuana retail store onsite consumption endorsement may not

- (1) allow any employee or agent to consume marijuana or marijuana product during the course of a work shift;
- (2) allow intoxicated or drunken persons to enter or to remain on premises;
- (3) sell, give or barter marijuana or marijuana product to an intoxicated or drunken person;
- (4) allow a person to consume marijuana or marijuana product not purchased for consumption in the consumption endorsement area licensed retail facility; 4

(5) allow a person to introduce marijuana or marijuana products onto the premises of a retail marijuana store which was obtained off of the licensed premises

(6) offer or deliver, as a marketing device to the general public, free marijuana or marijuana product to a patron;

- (7) deliver marijuana or marijuana product to a person already possessing marijuana or marijuana product that was purchased for consumption on the premises;
 - (8) sell, offer to sell, or deliver marijuana or marijuana product at a price less than the price regularly charged for the marijuana or marijuana product during the same calendar week;
 - (9) sell, offer to sell, or deliver an unlimited amount of marijuana or marijuana product during a set period of time for a fixed price;
 - (10) sell, offer to sell, or deliver marijuana or marijuana product on any one day at prices less than those charged the general public on that day;
 - (11) encourage or permit an organized game or contest on the licensed premises that involves consuming marijuana or marijuana product or the awarding of marijuana or marijuana product as prizes;
or
 - (12) advertise or promote in any way, either on or off the premises, a practice prohibited under 3 AAC 306.365(f)(5) – 3 AAC 306.365(f)(10) of this section.
- (g) A person may remove from the licensed premises marijuana or marijuana product that has been purchased on the licensed premises for consumption under this section, provided packaging is resealed for removal from the premises by the consumer.
- (h) Local governments retain a right to protest the issuance or renewal of individual retail marijuana store onsite consumption endorsements that is separate from the right to protest the

issuance of retail marijuana store licenses. Not later than 60 days after the director sends notice of an application for a new or renewal onsite consumption endorsement, a local government may protest the application by sending the director and the applicant a written protest and the reasons for the protest. The director may not accept a protest received after the 60-day period. If a local government protests an application for a new or renewal onsite consumption endorsement, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(i) A local government may recommend that the board approve an application with a condition or conditions for a new or renewal onsite consumption endorsement. The board will impose a condition or conditions recommended by a local government unless the board finds any of the recommended conditions to be arbitrary, capricious, and unreasonable. If the board imposes a condition recommended by a local government, the local government will assume responsibility for monitoring compliance with the condition unless the board provides otherwise.

(j) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license.

3 AAC 306.990 (b)

(27) “marijuana consumption area” means an area within a retail marijuana store premises, where marijuana and marijuana products may be consumed.

(37) "retail marijuana store premises" means an area encompassing both the retail marijuana store and the marijuana consumption area. 6

Peter Mlynarik Draft

3 AAC 306.365. Onsite consumption endorsement for retail marijuana stores. (a) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the documents and endorsement fee set out in this section.

(b) An application for a new or renewal onsite consumption endorsement must include

(1) the name of the applicant and DBA and license number of the retail marijuana store requesting the endorsement, along with the applicant's state business license number issued under AS 43.70;

(2) the applicant's operating plan, in a format the board prescribes, describing to the board's satisfaction the marijuana retail store's plans for

(A) security;

(B) isolation of the marijuana consumption area from other areas of the retail marijuana store;

(C) disposal or child resistant packaging of unconsumed marijuana; and

(D) preventing introduction into the consumption area of marijuana products not sold by the retail marijuana store.

(3) a detailed premises diagram showing the location of

(A) serving area or areas;

(B) doors, windows or other exits;

(C) access control points; and

(D) adequate separation from non-consumption area(s) of the marijuana retail store.

(4) An application for a new on-site consumption endorsement must meet the requirements of 3 AAC 306.025(b) and include in that notice the license number of the retail marijuana establishment requesting the endorsement.

(a) The non-refundable fee for a new or renewal onsite consumption endorsement is \$1000.

(b) A retail marijuana store that is issued an onsite consumption endorsement under this section is authorized to sell marijuana products to patrons for consumption on the licensed premises in an area separated from the remainder of the premises by a secure door. The holder of a marijuana retail store onsite consumption endorsement may sell for consumption on the premises

(1) edible marijuana products in quantities not to exceed 10mg of THC to any one person in a single transaction;

(2) food or beverages not containing marijuana;

(c) The retail marijuana store holding an onsite consumption endorsement under this chapter must

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

(2) restrict access to the onsite consumption area to persons not less than 21 years of age;

(3) monitor patrons for overconsumption;

(4) provide written materials containing marijuana dosage and safety information for each type of a marijuana product sold for consumption in the onsite consumption area at no cost to patrons ; and

(5) assure that consumers purchasing a marijuana product sold for consumption in the marijuana consumption area have access to the label for that marijuana or marijuana product as required in 3 AAC 306.345.

(d) The holder of a marijuana retail store onsite consumption endorsement may not

(1) allow marijuana to be smoked or inhaled on the premises or offer to sell marijuana that can be smoked or inhaled.

(2) allow any employee or agent to consume marijuana or marijuana product during the course of a work shift;

(3) allow intoxicated or drunken persons to enter or to remain on premises;

(4) sell, give or barter a marijuana product to an intoxicated or drunken person;

(5) allow a person to consume a marijuana product not purchased for consumption in the consumption endorsement area licensed retail facility;

(6) allow a person to introduce marijuana onto the premises of a retail marijuana store or marijuana products onto the premises of a retail marijuana store which was obtained off of the licensed premises

(7) offer or deliver, as a marketing device to the general public, free or marijuana products to a patron;

(8) deliver a marijuana product to a person already possessing a marijuana product that was purchased for consumption on the premises;

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

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

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

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

(13) advertise or promote in any way, either on or off the premises, a practice prohibited under 3 AAC 306.365(d)(6) – 3 AAC 306.365(d)(12) of this section.

(e) A person may remove from the licensed premises a marijuana product that has been purchased on the licensed premises for consumption under this section, provided packaging is resealed for removal from the premises by the consumer.

(f) Local governments retain a right to protest the issuance or renewal of individual retail marijuana store onsite consumption endorsements that is separate from the right to protest the issuance of retail marijuana store licenses. Not later than 60 days after the director sends notice of an application for a new or renewal onsite consumption endorsement, a local government may protest the application by sending the director and the applicant a written protest and the reasons for the protest. The director may not accept a protest received after the 60-day period. If a local government protests an application for a new or renewal onsite consumption endorsement, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(g) A local government may recommend that the board approve an application with a condition or conditions for a new or renewal onsite consumption endorsement. The board will impose a condition or conditions recommended by a local government unless the board finds any of the recommended conditions to be arbitrary, capricious, and unreasonable. If the board imposes a condition recommended by a local government, the local government will assume responsibility for monitoring compliance with the condition unless the board provides otherwise.

(h) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license.

3 AAC 306.990 (b)

(27) “marijuana consumption area” means an area within a retail marijuana store premises, where marijuana products may be consumed.

(37) “retail marijuana store premises” means an area encompassing both the retail marijuana store and the marijuana consumption area.

Words [BRACKETED] indicate language being deleted

3 AAC 306.305 (a) (4) is amended to read:

with prior approval of the board, permit consumption of [marijuana or] a marijuana product purchased on the licensed premises, in a designated area on the licensed premises.