



MEMORANDUM

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

DATE: September 14, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Local
Government Jurisdiction; Timing of
Public Objections (JU2017200477)

Local Government Jurisdiction

Summary: Local government jurisdiction is not straightforward. 3 AAC 306.025(d)(2) requires the director to give written notice of complete applications to “the local government with jurisdiction over the applicant’s proposed license.” This has been interpreted to be the most local form of government: the city. However, Title 29 of Alaska Statute grants planning and platting powers to the borough government, and with a few exceptions, that power is not delegated to city governments. The intention of the proposed draft is to allow the local government, whether it be city or borough, that has jurisdiction over a particular issue to be able to protest regarding that issue. For instance, a borough government may protest based on a land use issue but the city inside the borough may protest based on a tax issue.

The regulations changes require notification to all applicable local governments (will be no more than two) when notification to a local government is required.

Public Comment: Comment period 7/21 to 8/25. No public comments were received.

Recommendation: Adopt as written.

Timing of Public Objections

Summary: 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 the current regulations and 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 much closer to 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. 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 by the applicant. This creates an objection that the board will almost certainly view as arbitrary, capricious, and unreasonable, as it can contain no specifics or details of the proposed facility. The Board is then forced into the position of rarely or never responding to public objections, and the public is not given a meaningful opportunity to comment.

The proposed regulations change moves the objection period to be 30 days after an application is deemed complete and submitted to the local government. This would mean that the Board would not be able to consider applications for 30 days after being deemed complete, as the Board will need to review the public objection. Resolution of objections are not something that can be resolved by the director through delegation.

Public Comment: Comment period 7/21 to 8/25. No public comments were received.

Recommendation: Adopt as written.

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

Local Government Jurisdiction

3 AAC 306.025 (b)(3)(A) is amended to read:

(A) **each local government with jurisdiction over the licensed premises**

[THE LOCAL GOVERNMENT];

3 AAC 306.025 (d)(2) is amended to read:

(2) **each local government** [THE LOCAL GOVERNMENT] with jurisdiction over the applicant's proposed licensed premises.

3 AAC 306.035 (c)(2) is amended to read:

(2) **each local government with jurisdiction over the applicant's proposed licensed premises** [IN THE AREA IN WHICH THE APPLICANT'S PROPOSED LICENSED PREMISES ARE LOCATED].

3 AAC.045 (c)(2) is amended to read:

(2) **each local government with jurisdiction over the applicant's proposed licensed premises** [IN THE AREA IN WHICH THE LICENSED PREMISES ARE LOCATED];

3 AAC 306.060 is amended by adding a new subsection to read:

(d) For the purpose of this section, "local government" means each government with jurisdiction over the licensed premises.

Public Objection:

3 AAC 306.065 is amended to read:

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 the director has determined the**

application is complete and has given written notice to the local government according to 3

AAC 306.025. [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

and also to the Alcohol and Marijuana Control Office. If the board determines to conduct a

public hearing under this section, an interested person may give oral testimony at the public hearing.

3 AAC 306.075 (a) (2) is repealed:

(2) Repealed __/__/____.