



MEMORANDUM

TO: Mark Springer, Chair, and
Members of the Board

DATE: August 15, 2018

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Onsite
Consumption

In November of 2017, the board referred this project to a subcommittee which consisted of Mr. Emmett and Mr. Jones.

Mr. Emmett and Mr. Jones worked with me to address concerns raised by staff and in public comments.

Summary of major changes from the version posted for comment in August 2017:

- Various sections amended to add the concept of “endorsement”
- Ability of local governments to protest endorsement moved to 3 AAC 306.060
- Application and endorsement fees proposed in 3 AAC 306.100
- New section 3 AAC 306.110 to provide general “endorsement” provisions
- Through local option, a community can opt-out of onsite consumption endorsement, or specific operational characteristics of onsite consumption
- Limits on quantity sold changed to “per day” rather than “per transaction,” similar to tasting rooms for alcohol manufacturers
- Limits on quantity in 3 AAC 306.355 sold include product sold for onsite consumption
- Outdoor consumption area permitted with certain restrictions and enhanced notice to surrounding properties
- Clarification that access to consumption area is only through the retail store
- Applicant must provide plan on how to prevent introduction into consumption area of product not sold at store or sold for onsite consumption
- Definitions of “drunken person,” “intoxicated,” and “sight-obscuring wall or fence” added
- Change made from April/June draft to address requirement in SB 63 for a “freestanding” building

Questions for the board:

1. The limit on quantity sold for onsite consumption at 3 AAC 306.370(a)(2) states that a patron may purchase one gram of bud/flower AND edibles containing up to 10 mg of THC. Please confirm that the intent of the board is that these limits be cumulative, rather than either/or.
2. Assuming this draft is voted out for public comment, does the board wish a 30-day or 60-day comment period, or some other amount of time?
3. Does the board wish to hold an oral public hearing on this regulations project? If yes, would that be at the October meeting in Kenai or at the December meeting in Anchorage?

3 AAC 306.015(d) is amended to read:

(d) The board will impose other conditions or restrictions on a license **or endorsement** issued under this chapter when it finds that it is in the interests of the public to do so.

3 AAC 306.025 is amended to read:

3 AAC 306.025. Application procedure.

(a) An applicant must initiate a new marijuana establishment license **or endorsement** application on a form the board prescribes, using the board's electronic system.

(b) As soon as practical after initiating a new marijuana license **or endorsement** application, the applicant must give notice of the application to the public by

(1) posting a copy of the application, on the form the board prescribes, for 10 days at

(A) the location of the proposed licensed premises; and

(B) one other conspicuous location in the area of the proposed premises;

(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

(A) the name of the applicant;

(B) the name and location of the proposed premises;

(C) the type of license **or endorsement** applied for along with a citation to a provision of this chapter authorizing that type of license **or endorsement**; and

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

(3) submitting a copy of the application on the form the board prescribes to

(A) the local government; and

(B) any community council in the area of the proposed licensed premises.

(c) After the applicant completes the notice requirements in (b) of this section and submits each remaining application requirement listed in 3 AAC 306.020, the applicant must pay the application and licensing fees set out in 3 AAC 306.100. The applicant must then use the board's electronic system to inform the board that the applicant has submitted a complete application.

(d) When the director receives an application for a marijuana establishment license **or endorsement**, the director shall determine if the application is complete. Any application for a marijuana establishment license **or endorsement** that the director receives without the application fee is incomplete. If the director determines the application is complete, 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) the community council if the proposed licensed premises are located within the boundary of a community council established by municipal charter or ordinance; and

(4) any nonprofit community organization that has requested notification in writing.

(e) If an application for a marijuana establishment license **or endorsement** is incomplete, the director shall notify the applicant by electronic mail at the address provided by the applicant and shall either

(1) return an incomplete application in its entirety; or

(2) request the applicant to provide additional identified items needed to complete the application.

(f) When the director informs an applicant that its application is incomplete as provided in (e) of this section, the applicant must complete the application not later than 90 days after the date of the director's notice. If an applicant fails to complete its application during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana establishment license **or endorsement**.

3 AAC 306.060 is amended to read:

3 AAC 306.060. Protest by local government.

(a) Not later than 60 days after the director sends notice of an application for a new marijuana establishment license, **a new onsite consumption endorsement**, renewal of a marijuana establishment license, **renewal of an onsite consumption endorsement**, or transfer of a marijuana establishment license to another person, 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 license, **a new or renewal onsite consumption endorsement**, or for a transfer of a license to another person, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(b) A local government may recommend that the board approve an application for a new license, **a new onsite consumption endorsement**, renewal of a license, **renewal of an onsite consumption endorsement**, or transfer of a license to another person subject to a condition. The board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable. If the board imposes a condition a local government recommends, the local government shall assume responsibility for monitoring compliance with the condition unless the board provides otherwise.

(c) If a local government determines that a marijuana establishment has violated a provision of AS 17.38, this chapter, or a condition the board has imposed on the licensee, the local government may notify the board. Unless the director finds that the local government's notice is arbitrary, capricious, and unreasonable, the director shall prepare the determination as an accusation against the licensee under AS 44.62.360 and conduct proceedings to resolve the matter as provided under 3 AAC 306.820.

3 AAC 306.100 is amended to read:

3 AAC 306.100. Fees; refund.

(a) The non-refundable application fee for a new marijuana establishment license or an application to transfer a license to another person is \$1,000. **The non-refundable application fee for a new onsite consumption endorsement is \$1,000.**

(b) The non-refundable application fee for a license renewal application is \$600. If a renewal application is late as provided under 3 AAC 306.035(e), an additional non-refundable late renewal application fee is \$1,000. **The non-refundable application fee for renewal of an onsite consumption endorsement is \$600.**

(c) The non-refundable fee to request board approval of a change in a licensed marijuana establishment's business name, ownership, licensed premises diagram, operating plan, or proposed new marijuana product is \$250. A change fee does not apply to an application for transfer of a license or a transfer of controlling interest to another person. The annual license **or endorsement** fee, to be paid with each application for a new marijuana establishment facility license **or endorsement** and each license **or endorsement** renewal application is

- (1) for a retail marijuana store license, \$5,000;
- (2) for a limited marijuana cultivation facility license, \$1,000;
- (3) for a marijuana cultivation facility license, \$5,000;
- (4) for a marijuana concentrate manufacturing facility license, \$1,000;
- (5) for a marijuana product manufacturing facility license, \$5,000;
- (6) for a marijuana testing facility license, \$1,000;

(7) for an onsite consumption endorsement to a retail marijuana store license, \$2,000.

(d) The fee for a marijuana handler permit card is \$50.

(e) If the board denies an application for a license **or endorsement**, or for renewal of a license **or endorsement**, the board will refund the annual license **or endorsement** fee. The board will not refund a license **or endorsement** fee after the license **or endorsement** has been issued.

(f) Processing fees for late renewal after failure to pay taxes are as follows:

(1) if a licensee pays its delinquent tax after a local government protests renewal of the license, but before the board denies license renewal, \$200;

(2) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before a hearing officer is appointed to hear the applicant's appeal, \$500;

(3) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before the administrative hearing begins, \$5,000;

(4) if a licensee pays its delinquent tax after an administrative hearing that results in a hearing officer recommendation to deny the license renewal, \$10,000.

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

3 AAC 306.110. Endorsements generally.

(a) An endorsement expands the boundaries of a licensed premises or the authorized activities of the licensed business.

(b) Only the board may issue an endorsement.

(c) An endorsement is valid only in conjunction with a license. An endorsement may only be transferred to another person if the license for which the endorsement was issued is also transferred to that person. An endorsement expires if the license expires or the license is revoked. An endorsement is suspended if the license is suspended.

3 AAC 306.200 is amended to read:

3 AAC 306.200. Local options.

(a) If a majority of the persons voting on the question vote to approve the option, or if a local government's assembly or city council passes an ordinance to the same effect, the local government shall adopt a local option to prohibit

(1) the sale or importation for sale of marijuana and any marijuana product;

(2) the operation of any marijuana establishment, including one or more of the following license **or endorsement** types:

(A) a retail marijuana store;

(B) a marijuana cultivation facility;

(C) a marijuana product manufacturing facility;

(D) a marijuana testing facility;[.]

(E) an onsite consumption endorsement to a marijuana retail store license;

(3) specific operational characteristics of an onsite consumption endorsement to a marijuana retail store license, including consumption by smoking or vaping, or outdoor consumption.

(b) A ballot question to adopt a local option under this section must at least contain language substantially similar to: "Shall (name of local government) adopt a local option to prohibit (local option under (a) of this section)? (yes or no)."

(c) The ballot for an election on the options set out in (a)(2) of this section must include a brief explanation of the activity that each license **or endorsement** type on the ballot may carry out.

(d) If a local government dissolves under AS 29.06.450, any marijuana establishment license issued to that local government expires when the local government dissolves.

(e) A local government may not prohibit the personal use and possession of marijuana and marijuana products as authorized under AS 17.38.020.

(f) Nothing in 3 AAC 306.200 - 3 AAC 306.260 precludes a local government from applying for a marijuana establishment license **or endorsement** under other provisions of this chapter.

3 AAC 306.250 is amended to read:

3 AAC 306.250. Effect on licenses of restriction on sale.

If a majority of the voters vote under 3 AAC 306.200(a) to prohibit sale of marijuana and marijuana products or the operation of marijuana establishments, or if the assembly or city council passes an ordinance to the same effect, the board will not issue, renew, or transfer to another person a license for a marijuana establishment, **or issue or renew an endorsement,** with premises located within the boundary of the local government. A license for a marijuana establishment **or endorsement** within the boundary of the local government is void 90 days after the results of the election are certified, or after the effective date of an ordinance to the same effect if the local government opted out by ordinance. A license **or endorsement** that expires during the 90 days after the certification of a local option election, or during the period of time between passage of an ordinance to the same effect and the effective date of that ordinance, may be extended until it is void under this section, by payment of a prorated portion of the annual license **or endorsement** fee. (Eff. 2/21/2016, Register 217, am 7/27/2017, Register 223)

3 AAC 306.310(b) is amended to read:

(b) A licensed retail marijuana store may not

(1) conduct business on or allow a consumer to access the retail marijuana store's licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day;

(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);

(3) offer or deliver to a consumer, as a marketing promotion or for any other reason,

(A) free marijuana or marijuana product, including a sample; or

(B) alcoholic beverages, free or for compensation; **or**[.]

(4) allow intoxicated or drunken persons to enter or to remain on the licensed premises.

3 AAC 306.355 is amended to read:

3 AAC 306.355. Limit on quantity sold.

(a) A retail marijuana store may not sell **to any one person per day**[IN A SINGLE TRANSACTION]

(1) more than one ounce of usable marijuana;

(2) more than seven grams of marijuana concentrate for inhalation, or

(3) marijuana or marijuana products if the total amount of marijuana, marijuana products, or both marijuana and marijuana products sold contains more than 5,600 milligrams of THC.

(b) These limits include marijuana or marijuana product sold for onsite consumption under 3 AAC 306.370(a)(2).

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

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores.

(a) Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved onsite consumption endorsement is authorized to

(1) sell marijuana and marijuana products, excluding marijuana concentrates, to patrons for consumption on the licensed premises at the time of purchase only in an area designated as the marijuana consumption area and separated from the remainder of the premises, either by a secure door and having a separate ventilation system, or by being outdoors in compliance with (c)(4) below;

(2) sell for consumption on the premises

(A) marijuana bud or flower in quantities not to exceed one gram to any one person per day;

(B) edible marijuana products in quantities not to exceed 10 mg of THC to any one person per day; and

(C) food or beverages not containing marijuana or alcohol; and

(3) allow a person to remove from the licensed premises marijuana or marijuana product that has been purchased on the licensed premises for consumption under this section, provided it is packaged in accordance with 3 AAC 306.345.

(b) A licensed retail marijuana store with an approved onsite consumption endorsement may not

(1) sell marijuana concentrate for consumption in the marijuana consumption area or allow marijuana concentrate to be consumed in the marijuana consumption area;

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

(3) allow a person to consume tobacco or tobacco products in the marijuana consumption area;

(4) allow a person to bring into or consume in the marijuana consumption area any marijuana or marijuana product that was not purchased at the licensed retail marijuana store;

(5) 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;

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

(7) 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;

(8) 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

(9) advertise or promote in any way, either on or off the premises, a practice prohibited under this section.

(c) A marijuana consumption area shall have the following characteristics:

(1) the consumption area shall be isolated from the other areas of the retail marijuana store, separated by walls and a secure door, and shall have access only from the retail marijuana store;

(2) a smoke-free area for employees to monitor the marijuana consumption area;

(3) a ventilation system that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line;

(4) if outdoors, be found by the board to be compatible with uses in the surrounding area through evaluation of

(A) neighboring uses;

(B) the location of air intake vents on neighboring buildings;

(C) a sight-obscuring wall or fence around the outdoor marijuana consumption area;

(D) objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater; and

(E) any other information the board finds relevant.

(d) 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, which must include

(1) the applicant's operating plan, in a format the board prescribes, describing the retail marijuana store's plan for

(A) security, in addition to what is required for a retail marijuana store, including:

(i) doors and locks;

(ii) windows;

(iii) measures to prevent diversion; and

(iv) measures to prohibit access to persons under the age of 21;

(B) ventilation. If consumption by inhalation is to be permitted, ventilation plans must be

(i) signed and approved by a licensed mechanical engineer;

(ii) sufficient to remove visible smoke; and

(iii) consistent with all applicable building codes and ordinances;

(C) monitoring overconsumption;

(D) unconsumed marijuana, by disposal or by packaging in accordance with 3 AAC 306.345; and

(E) preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for onsite consumption;

(2) the applicant's detailed diagram of the marijuana consumption area which must show the location of

(A) the licensed premises of the retail marijuana store;

(B) serving area or areas;

(C) ventilation exhaust points, if applicable;

(D) the employee monitoring area;

(E) doors, windows, or other exits; and

(F) access control points;

(3) the title, lease, or other documentation showing the applicant’s sole right of possession of the proposed marijuana consumption area, if the area is not already part of the approved licensed premises for the retail marijuana store;

(4) an affidavit that notice of an outdoor marijuana consumption area has been mailed to property owners, residents, and occupants of properties within 250 linear feet of the boundaries of the property on which the onsite consumption endorsement is proposed, or the notification distance required by the local government, whichever is greater.

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

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

(2) monitor patrons in the marijuana consumption area at all times, specifically for overconsumption;

(3) display all warning signs required under 3 AAC 306.360 and 3 AAC 306.365 within the marijuana consumption area, visible to all consumers;

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

(5) package and label all marijuana or marijuana product sold for consumption on the premises as required in 3 AAC 306.345; and

(6) comply with any conditions set by the local government or placed on the endorsement by the board.

(f) 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) is amended to add the following subsections:

(41) “drunken person” has the meaning given in AS 04.21.080(b)(9);

(42) “freestanding” has the meaning given in AS 18.35.301(i)(1);

(43) “intoxicated” has the meaning given in AS 11.81.900(b)(34);

(44) “marijuana consumption area” means a designated area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement, where marijuana and marijuana products, excluding marijuana concentrates, may be consumed.

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

(46) “sight-obscuring wall or fence” means a wall or fence, including any gates, constructed of solid material and a minimum of six feet in height.