



MEMORANDUM

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

DATE: August 15, 2018

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Change from
Limited to Standard Cultivation
License (License Conversion)

The board initiated this project in January of 2018, seeking to explore whether there was an easier path for limited cultivation licensees to transition their license into a standard cultivation license than starting the whole process from scratch.

Staff reviewed the licensing process and recommends the following:

- The procedures for a new license application should be followed, including public notice, public posting, local government notice, and community council notice (where applicable) as the public and local governments have an interest in a small cultivation facility becoming a much larger cultivation facility, particularly as many limited cultivation facilities have been approved in homes in residential neighborhoods. Some local government ordinances differ based on license type.
- A new premises diagram, new proof of sole right of possession of the premises (if different), and any changes to the approved operating plan must be submitted. If the staff does not need to review the entire operating plan but needs only to review changes, that will be less work and a shorter review time.
- This process should not be combined with any license transfer or change of ownership procedures. Change of ownership can happen relatively quickly in a separate process before or after this process. If the licensee wishes to both transfer the license and change the license type, then a new license should be applied for. Thus entity documents, fingerprints, and financial interest statements would not be required.

In addition, staff concluded that this option should be available for concentrate manufacturers who wish to “upgrade” to product manufacturing licenses, and for the reverse conversion to happen as well. Staff proposes to call this “license conversion.”

Staff proposes that an application fee of \$1,000 be required, along with the balance of the license fee, should the conversion be from a less expensive license to a more expensive license.

While the proposal may not streamline the process as much as the board may have wished, staff is convinced that the requirements included in this proposal are all necessary and appropriate.

Options for the board:

- Put out for public comment as written
- Amend and put out for public comment
- Send back to staff for revisions
- Close the project without action

3 AAC 306.010(a) is amended to read:

(a) The board will not issue a marijuana establishment license if the licensed premises will be located within 500 feet of a school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the school ground, the outer boundaries of the recreation or youth center, the main public entrance of the building in which religious services are regularly conducted, or the main public entrance of the correctional facility. This section does not prohibit the renewal of an existing marijuana establishment license, **a license conversion under 3 AAC 306.047**, or the transfer of an existing marijuana establishment license to another person if the licensed premises were in use before the school ground, recreation or youth center, the building in which religious services are regularly conducted, or a correctional facility began use of a site within 500 feet. If an existing marijuana establishment license for premises located within 500 feet of a school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility is revoked or expires, the board will not issue another marijuana establishment license for the same premises unless the school ground, the recreation or youth center, the building in which religious services are regularly conducted, or the correctional facility no longer occupies the site within 500 feet.

(Eff. 2/21/2016, Register 217; am ___/___/____, Register _____)

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

3 AAC 306.047. License Conversion. (a) An application to convert an existing limited marijuana cultivation facility license to a standard marijuana cultivation license, an existing standard marijuana cultivation facility license to a limited marijuana cultivation facility license, an existing marijuana concentrate manufacturing facility license to a marijuana product manufacturing facility license, or an existing marijuana product manufacturing facility license to a marijuana concentrate manufacturing facility license, must be filed in writing on a form the board prescribes, in compliance with the application procedure set out in 3 AAC 306.025.

(b) To qualify for a license conversion under this section, neither the licensee nor the license location may change.

(c) The license conversion application must contain

(1) an affidavit showing where and when the applicant posted notice of the application, and proof of advertising as required in 3 AAC 306.025(b);

(2) any changes proposed to the approved operating plan;

(3) 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;

(4) the title, lease, or other documentation showing the licensee's sole right to possession of the proposed licensed premises, if the proposed licensed premises for the converted license differ from the existing licensed premises;

(5) the balance of the license fee, if the post-conversion license fee is greater than the pre-conversion license fee;

(6) the application fee; and

(7) any other information required by the board. (Eff. ___/___/____, Register _____)

3 AAC 306.060 is amended to read:

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, renewal of a marijuana establishment license, **license conversion**, 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, **for a license conversion**, 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, renewal of a license, **license conversion**, 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.

(d) In this section, “local government” means each local government with jurisdiction over the licensed premises. (Eff. 2/21/2016, Register 217; am___/___/_____, Register _____)

3 AAC 306.065 is amended to read:

3 AAC 306.065. Public participation. A person may object to an application for a new license, renewal of a license, license conversion, 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 that the application is complete and has given written notice to the local government in accordance with 3 AAC 306.025. 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 board. If the board determines to conduct a public hearing under this section, an interested person may give oral testimony at the public hearing. (Eff. 2/21/2016, Register 217; am 12/28/2017, Register 224; am___/___/_____, Register _____)

3 AAC 306.075(b) is amended to read:

(b) Not later than seven days before the date set for board action on [AN] applications, [FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO ANOTHER PERSON,] the director shall post a meeting agenda listing the matters scheduled for action at that meeting. The board may review an application [FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO ANOTHER PERSON,] without additional notice to the applicant.

(Eff. 2/21/2016, Register 217; am 12/28/2017, Register 224; am___/___/_____, Register _____)

3 AAC 306.080(d) is amended to read:

(d) If the board denies an application for a new license, renewal of a license, **license conversion,** or transfer of a license to another person, the board will, not later than 15 days after the board meeting at which the application was denied, furnish a written statement of issues to the applicant, explaining the reason for the denial in clear and concise language, and identifying any statute or regulation on which the denial is based. In the notice of denial the board will inform the applicant of the right to an informal conference under 3 AAC 306.085 and to a formal hearing under 3 AAC 306.090. (Eff. 2/21/2016, Register 217; am___/___/_____, Register _____)

3 AAC 306.080 is amended by adding a new subsection to read:

(e) After review of the application and all relevant information, the board will deny an application for license conversion if the board finds

- (1) the application contains any false statement of material fact;
- (2) the license would violate any restriction applicable to the particular license type authorized under this chapter;
- (3) the license is prohibited under this chapter as a result of an ordinance or election conducted under AS 17.38.210, 3 AAC 306.200, or 3 AAC 306.230;
- (4) the board finds that the application does not adequately demonstrate that the applicant will comply with applicable provisions of this chapter;
- (5) the application is protested by the local government; or

(6) the license conversion would not be in the best interests of the public. (Eff. 2/21/2016, Register 217; am___/___/_____, Register _____)

3 AAC 306.085(a) is amended to read:

(a) If an applicant for a new license, renewal of a license, **license conversion**, or transfer of a license to another person is aggrieved by an action of the board denying the application, the applicant may, not later than 15 days after the date of the written notice of denial, request an informal conference with the director or the board. An informal conference requested under this section must be held at a time and place convenient to the applicant and the board, but not later than the next scheduled meeting of the board. An informal conference may be conducted telephonically.

(Eff. 2/21/2016, Register 217; am___/___/_____, Register _____)

3 AAC 306.090(a) is amended to read:

(a) If an applicant for a new license, renewal of a license, **license conversion**, or transfer of a license is aggrieved by an action of the board denying the application, the applicant may request a formal hearing by filing a notice of defense in compliance with AS 44.62.390 not later than 15 days after the date of the written notice of the denial, or as provided in 3 AAC 306.085(b) if the applicant requested and participated in an informal conference. Failure to file a notice of defense as provided in this section constitutes a waiver of the right to a formal hearing.

(Eff. 2/21/2016, Register 217; am___/___/_____, Register _____)

3 AAC 306.095 is amended to read:

3 AAC 306.095. Appeals. (a) An aggrieved applicant or marijuana establishment license holder may appeal to the board regarding any action of the director, or an employee or agent of the board regarding an application for a new license, a license renewal, **a license conversion,** or a transfer of license to another person.

(b) An applicant or marijuana establishment license holder aggrieved by a final decision of the board regarding an application for a new license, a license renewal, **a license conversion,** or a transfer of license to another person may appeal to the superior court under AS 44.62.560. (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

3 AAC 306.100(a) is amended to read:

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

(Eff. 2/21/2016, Register 217; am 7/19/2017, Register 223; 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