



**Marijuana Control Board
Meeting Minutes
October 22, 2019
Telephonic**

● **ADMINISTRATION**

1:02 pm

A. Call to Order

B. Roll Call

Board Members Present Via Phone

Mark Springer, Chair, Rural Member

Loren Jones, Public Health Member

Nick Miller, Industry Member

Christopher Jaime, Public Safety Member

Staff Present In Person

Bruce Schulte, Public Member

Staff Present

Erika McConnell, Director

Mikal Martin, Records and Licensing Supervisor

Counsel Present

Joan Wilson, Assistant Attorney General

C. Approval of Agenda

Bruce Schulte moves to approve the agenda.

Christopher Jaime seconds the motion.

None opposed, motion carries.

● **BOARD GOVERNANCE**

1:04 pm

Mark Springer asks Joan Wilson if she understands the purpose of the Board Governance section of the agenda. He then explains the purpose of the board governance section.

Mark Springer states he is now a member of Bethel City Counsel but he states he has discussed with them that he will not participate any discussion regarding marijuana licenses/licensees.

No other board members disclose change in status.

● **APPLICATIONS FROM PREVIOUS MEETINGS**

1:05 pm

A. Tabled

1. License #20844:	Token Up	<u>TAB 1</u>
Licensee:	907 Promos, LLC	
License Type:	Retail Marijuana Store	
Premises Address:	Mile Post 1313.8 Alaska Highway Tok, AK 99780	
Local Government:	No Local Government	
For Consideration:	Petition; objections and comments received.	

Mark Springer and Erika McConnell discuss previous action on this license. Erika McConnell clarifies that no action was taken but that the board allowed the existing signatures to maintain validity. She explains the main points that were discussed during previous consideration of this matter, and petition requirements.

Erika McConnell clarifies for the record that the percentage of individuals over 21 provided to the applicant through AMCO had a large margin of error (as noted by the state demographer) and that the 2010 Census data is more accurate.

Mark Springer asks the demographer to speak.

Eric Sandberg clarifies that he is the interim demographer, but that the new demographer has reviewed and approved of his methodology.

Mark Springer states that the notes from Eric Sandberg's review were provided to the board but asks a summary for the record.

Eric Sandberg states that the census borough creates a "census designated place" (CDP) for places like Tok. The Tok CDP boundaries are the Tok River to Tanana and then the Eagle Trail to the AK Highway at Mile 1320. The only time population for an area is determined in more detail than the population within that CDP is during the 10-year census. He then reviewed the 5 mile radius around the post office states that the radius is entirely located within the Tok CDP with some of the population of the CDP being outside the 5 mile radius. Using the 2010 census block data (smallest level of population detail), the total population in Tok was 1,258 with 920 being 21 or older. He reviewed census blocks outside the 5 mile radius and found approximately 51 people in the outside of the radius. This gives the number of 869 people in the radius. He reviewed the PFD numbers and calculated the number within the radius, finding 834 people confirming the general number calculated. He notes how difficult it is to calculate the population within a circle.

Erika McConnell states that page 2 of the October 22 memo has a map of the CDP of Tok with a circle representing the 5 mile radius and page 3 shows a map of the census blocks with a red circle for the 5 mile radius.

Loren Jones states that if the board were to accept the number of 869, the number of 622 signatures submitted appears to be over the provided signature requirement.

Christopher Jaime states that only a portion of the signatures were verifiable.

Erika McConnell clarifies that 490 were verified originally. The applicant would need to provide a total of 579 valid signatures.

Bruce Schulte asks the demographer about the total number of people shown by the PFD.

Eric Sandberg states that the PFD number was 834 people.

Bruce Schulte asks about qualifying for PFD at age 18. He asks about the people 18-20 in that area. Eric Sandberg states that he reviewed birthdates and confirmed that those individuals he counted were over 21.

Bruce Schulte asks if more signatures have been collected.

John Guest, applicant, states that 62 more signatures have been collected. He wants to make a point that many signatures were discounted and he would like to be able to identify the individuals that were not counted that could have been.

Christopher Jaime states that he wants businesses to succeed so that addresses can be verified, if they have over 579, the petition can be approved at the next meeting.

Loren Jones states that one of the issues from September was that the signature process is difficult for staff. He wouldn't mind seeing the other signatures but how long would the additional 69 take to verify? He states that the regulation made sense when it was written but he always expected licenses to be in a Local Government area. This may be the only time that staff runs into this particular issue. Is this overkill in terms of staff time and number manipulation?

Christopher Jaime states that he is comfortable with the state demographer's numbers and the petition signatures. He is concerned about the objections.

Lance Wells and Jessika Smith state that they would like to speak.

Jessika Smith states that the concern with the math from Eric Sandberg is that the total population is 1258. Additionally she states that the 68.6% comes from the Census data. She makes a mathematical argument regarding population. She is concerned about the logical fallacy and she discusses population density.

Erika McConnell explains that the DCRA website was used to provide the 68% number originally provided to the applicant, but that it was an extrapolation with a margin of error of 112 people. AMCO went back to the 2010 Census percentage in CDP of Tok for their final calculation.

Jessika Smith states that she is concerned about the death vs birthrate in Tok because the death rate is higher than the birthrate.

Bruce Schulte states if the total number is 869, the threshold for accepted signature is 573. He asks the applicant if they could bring 573 signatures by the November meeting.

John Guest states that they feel they can meet the 573 signature standard.

Bruce Schulte asks about a motion to table.

**Bruce Schulte moves to table consideration of this matter to the November meeting.
Christopher Jaime seconds the motion.**

Bruce Schulte states that he sees challenges; documents must be submitted by Friday to be on the agenda. He proposes granting licensee leeway such as extra time.

Erika McConnell states that staff wishes to accommodate the applicant's needs but staff is preparing for the next board meeting and that staff will do their best to complete the review.

Bruce Schulte asks the applicant if they can have everything done by the 25th.

John Guest states that the applicants have put a great amount of time into this and if AMCO can be certain to vet the signatures submitted by the 25th they can be willing to make the effort.

Bruce Schulte concludes comments. He hopes that the applicants can get the necessary material to AMCO on time.

Mark Springer restates motion to table to November.

Erika McConnell clarifies that part of the motion was that the signatures must be submitted by the 25th.

**Nick Miller, Christopher Jaime, and Bruce Schulte vote yes, Loren Jones and Mark Springer vote no.
Motion passes 3-2.**

2. License #16991:	Stoney Moose Kitchens	<u>TAB 2</u>
Licensee:	E & M Holdings, LLC	
Premises Address:	9737 Mud Bay Road, Suite 104 Ketchikan, AK 99901	
Local Government:	Ketchikan Gateway Borough	
For Consideration:	Products tabled at February 2019 meeting.	

Applicant is not present at this time.

Mark Springer asks for motion to table the new products to the November meeting.

**Nick Miller moves to table consideration of Products to the November meeting.
Bruce Schulte seconds the motion.
None opposed, motion carries.**

● **LEGISLATIVE REQUESTS** **TAB 3**

Mark Springer states that phones went dead at the end of the last meeting and this matter was tabled.

Erika McConnell summarizes the list of requests in Tab 3.

She then notes that the board has also requested consideration of

8. Changing the definition of local government to include tribal governments.

9. Allowing a native corporation to be a licensee by creating a residency exception.

10. Funding for additional staff (particularly enforcement members).

Erika McConnell states that there was discussion of prioritization of all requests.

Mark Springer states that #8 is important to the previously considered Tok matter as well. Perhaps the legislature should empower “unincorporated community corporations” (similar to tribal governments) by giving the same standing for objection or non-objection that a municipality or other local government has.

Erika McConnell asks what an Unincorporated Community Corporation is.

Mark Springer states that this is a mechanism to receive funding from the state. DCRA should be able to clarify that unincorporated community corporations exist. He discusses different corporations that he knows of.

Bruce Schulte states that he does not support some of the listed priorities. He suggests that the board take these one by one to determine if they should be on the list of requests or not. He finds some of these to be law enforcement issues. He wishes to limit overlap. He asks that the board discuss the proposed priorities one by one.

Christopher Jaime states that the items numbered 8, 9, & 10 in the director’s summary were not included in the packet.

Erika McConnell states that those were not included in the tab but were mentioned at the September meeting.

Mark Springer states that some have been considered since July 2015.

Mark Springer asks if the board sent a list to the Governor’s office last year.

Erika McConnell states that the Commissioner Navarre’s office went through priorities with Governor Walker’s office and then once the administration changed, AMCO did not hear what Commissioner Anderson forwarded for the last cycle.

#1 (Tax Structure in AS 43.61)

Mark Springer asks if there is objection to this item being on the request list.

Bruce Schulte states that he is unsure that the Department of Revenue needs to take point on this. He finds this a statutory matter and the Legislature must deal with this. DOR doesn’t focus on the industry and he finds it appropriate to bring this directly to the legislature for a fix.

Mark Springer states that DOR collects taxes and are therefore the party responsible.

Loren Jones states that, to Bruce Schulte, the board is still part of the administration. If the administration did not propose certain things than legislators could. If someone outside the Governor’s office asks the legislature to do a thing, it’s rarely acted upon. He doesn’t find that the Governor looks fondly on a board going directly to the legislature. The industry can go to the legislature but he finds it not in the role of the board to do.

Bruce Schulte states that he is not opposing this item.

Mark Springer states that basically they will continue to ask the Governor to ask the legislature to look at it.

Erika McConnell asks if a vote will be taken.

**Vote is called-
None opposed, item is added to the list.**

#2 (Transportation between license types)

Mark Springer states that this is also a legislative fix and Erika McConnell confirms.

Mark Springer asks how soon this can be to the commissioner's office.

Erika McConnell states as soon as possible.

Mark Springer asks if anyone finds that change to the language is required.

None opposed, item is added.

#3 (Indemnification of minors)

Mark Springer clarifies that this is indemnity for minors to present real ID in an attempt to gain entrance to a licensed premises. Only at the request of any law enforcement officer to assist in an enforcement investigation. This is for investigations not just a standard inspection. The only way to investigate allegations of selling to minors is to attempt a buy. The alcohol statutes have this indemnity clause. He references the tobacco laws having this as well. He states that this clarification is to address Bruce Schulte's concerns that were voiced at the September meeting.

Bruce Schulte states that he doesn't oppose the intent. He is concerned that boundaries must be respected. He has seen AMCO enforcement conducting themselves as law enforcement without the constraints that law enforcement has. He supports this request from Anchorage Police Department or the Troopers. He finds it inappropriate coming from the board. This is a law enforcement issue.

Erika McConnell clarifies that AMCO enforcement is law enforcement. They are authorized to enforce criminally punishable provisions of their titles.

Mark Springer states that if he were a licensee he would welcome this. Minors should not be able to enter with a real ID. This investigative tool is not to entrap. This would be an amendment to Title 17.38 to authorize any law enforcement agency that may require the minor indemnification. He asks for any other board member comments.

**Mark Springer asks for a vote to put Item 3 on the list for the request.
Mark Springer, Nick Miller, Loren Jones, and Christopher Jaime vote yes, and Bruce Schulte votes no.
The vote passes 4-1, and this item is added to the list.**

#4 (Prohibit personal solvent-based manufacturing)

Erika McConnell clarifies that concentrates would still be allowed, just not solvent based manufacture of concentrates due to the public safety concerns.

Bruce Schulte states that when the Municipality of Anchorage discussed this, people were using butane to produce extracts. He finds this not to be related to the MCB regulation of the marijuana industry, the MCB does not regulate personal choices. He states that many concentrates could be more safely produced using ethanol which is included. The proposed request is overly broad and he asks for other board member contributions. The board must stay in their lane.

Christopher Jaime asks Nick Miller for input.

Nick Miller states that he disagrees that they should be putting this forward. If this is a public safety issue it should be brought by the community or Fire Marshal. This is personal responsibility and he doesn't see why people shouldn't be able to do so.

Loren Jones states that he is unsure. Juneau did a similar thing at the Fire Marshal's request due to some meth fires in hotels that were difficult to prosecute. The Juneau ban was for flammable manufacturing of substances. He sees value here but if it got to legislative hearing the issues raised by Bruce Schulte and Nick Miller would be discussed. Someone who is black market producing, it is the roll of the board to reduce black market sales. Juneau Police Department has stated that they do not regulate marijuana unless it's a DWI, they're relying on AMCO to enforce the laws. He disagrees with Bruce Schulte, this is a big argument that has been done with the Alcoholic Beverage Control (ABC). ABC was moved into Department of Commerce. This is a conflict where there are some powers that carried over from ABC's previous placement. He finds this not to be a high priority, and believes that this matter will not receive legislative attention unless the Fire Marshal gets on board. He requests this item to be a low priority.

Nick Miller states that this is a matter of personal use. Personal use cannabis is legal in the state of Alaska. When he sees the word personal he has a problem with the MCB restricting personal use marijuana.

Loren Jones states that in Juneau they find a lot of personal grow and issues not being in a person's home but in a rental. While it can be a personal grow it's not always on personal property. Lease or rental agreement can be an issue. He understands the personal argument but finds rentals problematic.

Christopher Jaime states that he sees both versions.

Mark Springer states he would like to see them pass on this request. Someone won't blow themselves up making Everclear tincture. Some situations may have explosions but this seems to be a local concern rather than that of the board. He sees this as a low priority.

Erika McConnell states that she wishes to make two comments (not argumentative); she clarifies that the Municipality code language wasn't provided as a specific suggestion but a guideline. She respects the boards consideration of local governments' authority, however, the board's authority and expertise includes 17.38 which includes personal use although AMCO doesn't take any action regarding personal use from the enforcement side. She urges the board to think of themselves as the expert on 17.38 and she finds it in the board's authority to make this request.

Bruce Schulte states that in 2014 there was discussion about home use of butane and people blew themselves up. The speculation in 2014 was that if someone could buy legal product those explosion events would diminish and they have.

Mark Springer requests a vote.

Loren Jones, and Christopher Jaime vote yes, Nick Miller, Bruce Schulte and Mark Springer vote no.

The vote fails 2-3.

#5 (Six/Twelve plant limit)

Mark Springer summarizes this request.

Erika McConnell clarifies that if a warehouse is rented in the industrial facility, it isn't a "dwelling" as allowed in this section. She finds that a significant violation must occur for other law enforcement to take a case. If someone is growing 500 plants in a warehouse and calling it a "personal" grow, she would hate to see this type of illegal cultivation compete with the legal grow.

Mark Springer asks where this comes up with the warehouse being under "control" of the individual how can someone argue that the possession limit doesn't apply.

Erika McConnell clarifies that the limit as written applies to "dwellings" and there could be an argument made that it does not apply to a facility that is not a "dwelling".

Bruce Schulte asks if anyone has attempted this argument.

Erika McConnell states that they haven't yet but this request would prevent them from being able to.

Bruce Schulte states that this is fixing a non-existent problem, per the governor's office push for lesser regulation, why bother? The board should focus on the regulated licensee impact, unless this becomes a problem there is no reason to support this request.

Loren Jones states that the industry is still concerned about the black market.

Individual (Northern Corruption Monitor 907) tries to speak.

Mark Springer states that this is not for public comment.

Joan Wilson clarifies that the public has the right to listen to a meeting but unless public comment is scheduled the board is not required to take public comment.

Northern Corruption Monitor 907 indicates that he does not approve of this denial of opportunity to speak.

Erika McConnell provides information about public comment period that is placed on some agendas and the option to email the board at marijuana@alaska.gov. She also provides information that the public comment option will be available in November.

Christopher Jaime motions to adjourn.

Northern Corruption Monitor 907 states that he will exit the conversation at this time so that adjournment is not required.

Mark Springer hears no second. Meeting does not adjourn.

Mark Springer states that he thanks the individuals listening for their decorum and clarifies that public comment for agenda items is not received unless specifically scheduled.

Loren Jones states that he was pointing out that the industry has asked the board to look at the black market. While Bruce Schulte states that the increase of legal decreases black market, other people don't feel that that has worked. Discussing these matters is important and as it is a statutory change request, it is useful to minimize black market possibilities.

Mark Springer states that there are two 17.38 in the books. There is conflict between 020 and 030.

Joan Wilson confirms that there are two sets.

Mark Springer states that this matter is worth putting on the list.

Joan Wilson states that in addition to the board she also advises the Division of Agriculture. For someone to participate in the Hemp program at this time they must be in the pilot program through that division. No individual grow of industrial hemp is allowed. Division of Agriculture may need to look at this for industrial hemp as well.

Mark Springer asks for vote.

Bruce Schulte votes no, Mark Springer, Nick Miller, Loren Jones and Christopher Jaime vote yes. Item is added to the list of requests.

#6 (Set possession and transport limits for concentrates and edibles)

Mark Springer summarizes this item, which requests adding concentrates and edibles to limits already present.

Erika McConnell states that there is no specific language proposed; equivalency to 1 oz. of flower was considered in purchase caps but this proposal doesn't propose specific limits. No clear guidance for law enforcement is given at this time which she finds possibly problematic.

Mark Springer states that this is a potential issue, but all the board has to say is marijuana or marijuana products.

Bruce Schulte states that he objects to this because the definition of marijuana already includes concentrates; the discussion is about the regulated lawful industry which is already capped by sales.

Mark Springer asks to drop item 6 from the list.

None opposed, item 6 is removed.

#7 (Majority required to adopt regulations)

Mark Springer and Erika McConnell clarify the requirements. Currently if 3 members are present, a regulation could pass on a 2-1 vote; this would change the requirement from the majority of those present to a majority of the whole membership of the board.

Mark Springer supports this proposal to be safe.

Loren Jones states that there have been times that the board has tabled consideration of items when the entire board is not present. In practice this has been done but he supports the change anyway to ensure that it continues to occur.

Mark Springer agrees with Loren Jones.

No other discussion is raised.

None opposed, item is added to the list.

#8 (Definition of Local Government)

Mark Springer summarizes this request. To request that federally recognized tribes, unincorporated community corporations, and any other recognized body to the legislature be afforded the rights of a local government. The legislature is the governing body of the unincorporated boroughs.

Loren Jones agrees that this would be a request to the legislature. His concern is that this is a can of worms that the legislature has been trying to deal with and has not been able to come up with a way to recognize a government outside of a Title 29 community. He supports piggybacking but not opening it for marijuana regulation solely. He finds this to muddy the waters and he doesn't think the board will receive resolution in this matter. This governor probably doesn't want to give power to governments that aren't acknowledged in Title 29.

Mark Springer asks for other comments regarding this matter.

Bruce Schulte states that his initial inclination was to support this item, but that Loren Jones makes a compelling argument. This is a can of worms that he is unwilling to open up.

Mark Springer votes yes, Loren Jones, Nick Miller, Christopher Jaime and Bruce Schulte vote no. Vote fails 1-4, item is not added.

#9 (Allowing native corporations to be licensees by creating residency exceptions)

Erika McConnell states that this could be done through regulation.

No action is taken, item is not added to the list.

10 (Funding for additional staff)

Mark Springer states that they should ask for 5 FTE in enforcement and an assistant director.

Bruce Schulte states that he is all for giving staff resources but he is also comfortable better defining the scope of their expectations.

Mark Springer asks for other discussion.

Erika McConnell states that she is unsure that the budget could afford 5 new positions and suggests that limiting the request to 2 would be more realistic. She requests a deputy director position.

Mark Springer asks if enforcement or licensing is needier for additional staff.

Erika McConnell states that enforcement has a higher need at this time.

Mark Springer asks for additional comment.

Nick Miller states that he is comfortable with the proposal due to staff input.

Christopher Jaime asks for repeat of the proposed request.

Mark Springer stated that the proposal is now for a deputy director and enforcement team member- the budget is too tight for 5 people.

Erika McConnell states that the alcohol program and marijuana program are expected to be self-sufficient. The increased renewal marijuana license fees just took effect this licensing period. The new fees are changing the monetary intake. Both positions would be funded from both programs. She recommends not asking for extra money. Limited position requests should be used until stabilization of industry. Alcohol license numbers are stable- marijuana is less stable and very new, the number of licenses, and therefore predictable revenue, has not stabilized.

Bruce Schulte states that he supports this, the discussion is that the fees support the AMCO office but the tax revenue is not addressed. Perhaps the board could request DOR to present a discussion regarding where tax money goes.

Mark Springer states that reports have been received. Tax revenue is portioned out by the legislature. They know where that money is going. There is still expectation that the board will pay back the startup money from fees.

None opposed to this item, it is added to the list of requests.

Mark Springer suggests a priority list of:

- 1) #1 Tax structure in AS 43.61***
- 2) #7 Majority required to adopt regulations***
- 3) #5 Six/twelve plant limit***
- 4) #3 Indemnification for minors***
- 5) #2 Transportation between license types***
- 6) #10 Funding for additional staff***

Nick Miller states that transport should be second on the list because it effects commerce substantially.

Mark Springer states that he is tempted to move indemnification to third.

Bruce Schulte clarifies the list order.

Christopher Jaime asks for indemnification to be moved up to third. The new order is item #1, #2, #3, #7, #5 and then #10.

Mark Springer states that item #7 is easy and no crystal ball can say what the board in 2025 will be like.

Mark Springer states the proposed order again and asks for any suggested changes.

Mark Springer asks for vote on the following order of priority:

- 1) #1 Tax structure in AS 43.61**
- 2) #2 Transportation between license types**
- 3) #3 Indemnification for minors**
- 4) #7 Majority required to adopt regulations**
- 5) #5 Six/twelve plant limit**
- 6) #10 Funding for additional staff**

None opposed, vote for prioritization order carries.

● **BOARD COMMENTS**

Bruce Schulte states that, for the next meeting, he proposes to add a section to the agenda for consideration of the Alcoholic Beverage Control Board's action regarding the director. He states that the ABCs action requires that the MCB consider the matter.

Mark Springer states that he notes the request.

Bruce Schulte states that he wishes it to be on the agenda and be noticed appropriately.

Mark Springer states that if it is on the agenda, the agenda is always noticed.

Christopher Jaime asks if it will be on the agenda.

Bruce Schulte asks for a vote to place this item on the agenda.

Mark Springer states that he will likely have consideration of the ABC action regarding the director on the agenda.

● **NEXT MARIJUANA CONTROL BOARD MEETING**

The next meeting is November 13-15, 2019, in Anchorage. All applications must be deemed complete and all other information for inclusion in the board's packets must be received by **October 25, 2019**.

● **ADJOURN**

2:46 pm

Christopher Jaime moves to adjourn.

Bruce Schulte seconds the motion.

None opposed, motion carries.