

# Notice of Violation

(3AAC 306.805)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date:

License #/Type:

Licensee:

Address:

DBA:

AMCO Case #:

This is a notice to you as licensee that an alleged violation has occurred. If the Marijuana Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

**3 AAC 306.805 provides that upon receipt of a Notice of Violation, a licensee may request to appear before the board and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice of Violation. A licensee may respond, either orally or in writing to the Notice. 3 AAC 306.810 (2)(A)(B)(C) failed, within a reasonable time after receiving a notice of violation, to correct any defect that is the subject of the notice of violation of AS 17.8 or this chapter.**

**IT IS RECOMMENDED THAT YOU RESPOND IN WRITING TO DOCUMENT YOUR RESPONSE FOR THE MARIJUANA CONTROL BOARD.**

**\*Please send your response to the address below and include your marijuana license number in your response.**

Alcohol & Marijuana Control Office  
ATTN: Enforcement  
550 W. 7<sup>th</sup> Ave, Suite 1600  
Anchorage, Alaska 99501  
[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)

Issuing Investigator:

Received by:

SIGNATURE:



SIGNATURE:

Delivered VIA:

Date:

# Notice of Violation

(3AAC 306.805)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 4/5/19

Licensee: Cannabaska

DBA: Alaskasense, LLC.

License #/Type: Standard Marijuana Cultivation Facilities

Address: 521 W. Tudor Road, Unit 202 Anchorage, AK 99503

AMCO Case #: AM190576

This is a notice to you as licensee that an alleged violation has occurred. If the Marijuana Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

On April 4th, 2019 Haley Gorlick, operations manager for Alaskasense and Cannabaska, self reported via email that Alaskasense transferred untested marijuana product to Cannabaska that was then sold to eight customers before the problem was identified. In her email Gorlick identified changes to their procedures that would ensure the problem does not occur again.

These actions are in violation of:

3 AAC 306.455. Required laboratory testing

(a) A marijuana cultivation facility shall provide a sample of each harvest batch of marijuana produced at the facility to a marijuana testing facility and may not sell or transport any marijuana until all laboratory testing required under 3 AAC 306.645 has been completed.

**3 AAC 306.805 provides that upon receipt of a Notice of Violation, a licensee may request to appear before the board and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice of Violation. A licensee may respond, either orally or in writing to the Notice. 3 AAC 306.810 (2)(A)(B)(C) failed, within a reasonable time after receiving a notice of violation, to correct any defect that is the subject of the notice of violation of AS 17.8 or this chapter.**

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550 W. 7<sup>th</sup> Ave, Suite 1600  
Anchorage, Alaska 99501  
[amco.enforcement@alaska.gov](mailto:amco.enforcement@alaska.gov)

Issuing Investigator: J. Rukes

Received by:

SIGNATURE:

SIGNATURE:

Delivered VIA: Email

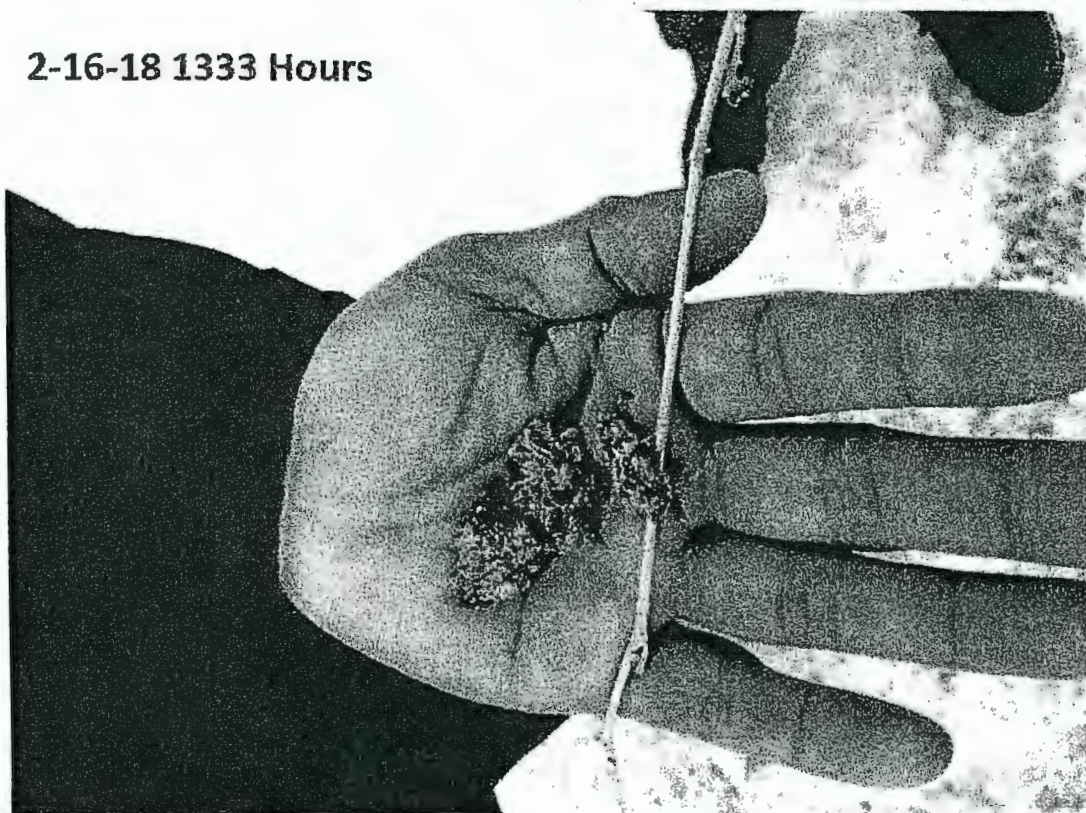
Date:



**Attachment I**



**2-16-18 1333 Hours**





## Attachment I



**2-16-18 1332 Hours**

I requested that they get a key for the padlock to open the waste dumpster so we could inspect the contents. They brought me a key back that was labeled for "retail" not cultivation, the number on the key also did not match the number on the lock. I advised them that I believed that the key they gave me was the wrong one and to find the correct one. They said that the key was the correct one and that the lock was frozen. I attempted to open the lock without any positive results.

We entered AlaskaSense after they said they needed to locate the key. Upon entry, I advised Smadar Warden and Evan Neal that I would like to see their waste and to show me their mulcher. They were unable to locate their mulcher (which is in their operating plan for waste disposal). I observed a large black industrial waste bag with marijuana, to include leaves, stems and flower. I asked what was the process for rendering unusable if they do not have a mulcher, they said they broke them down into small pieces and ground them in a food processor. I asked where the food processor was, Mr. Neal said that he did not know where it was and it may be downstairs. He then admitted that the mulcher broke some time ago and they had not purchased a replacement.

At this time, Investigator's Whiteman and I left AlaskaSense for a scheduled meeting. I asked Mr. Neal and Ms. Warden to cooperate with the Muni Code Enforcement. I also asked the Muni to report back what they found in the waste dumpsters.



## Attachment I

The Muni Code Enforcement attempted to have AlaskaSense open the waste dumpsters for approximately 20 minutes without success. AlaskaSense refused inspection to the Muni. The Muni left AlaskaSense at approximately 1410 hours.



Within 5 minutes after the Muni Code Enforcement left AlaskaSense, AlaskaSense employees open the waste dumpsters .

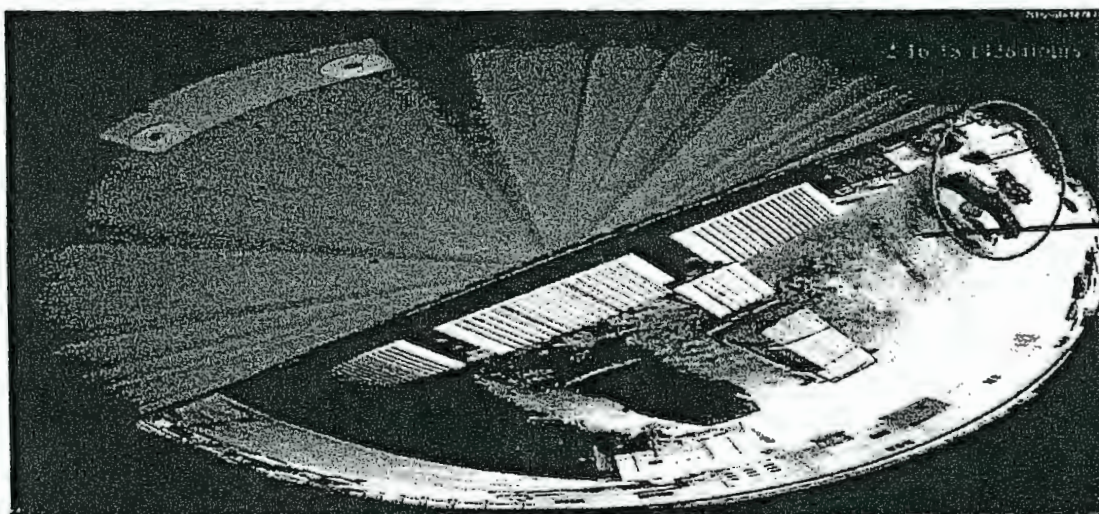
Numerous employees were observed from approximately 1415 hours to 1450 hours rooting around the waste dumpsters, at approximately 1433 hours, an individual is observed carrying in a plastic that was removed from the waste dumpster.

An interview with Brian Vanderwood, GM for Northern Waste confirmed that Evan Neil contacted them on 2-16-18 at approximately 1430 hours for an unscheduled pick up on both waste dumpsters.

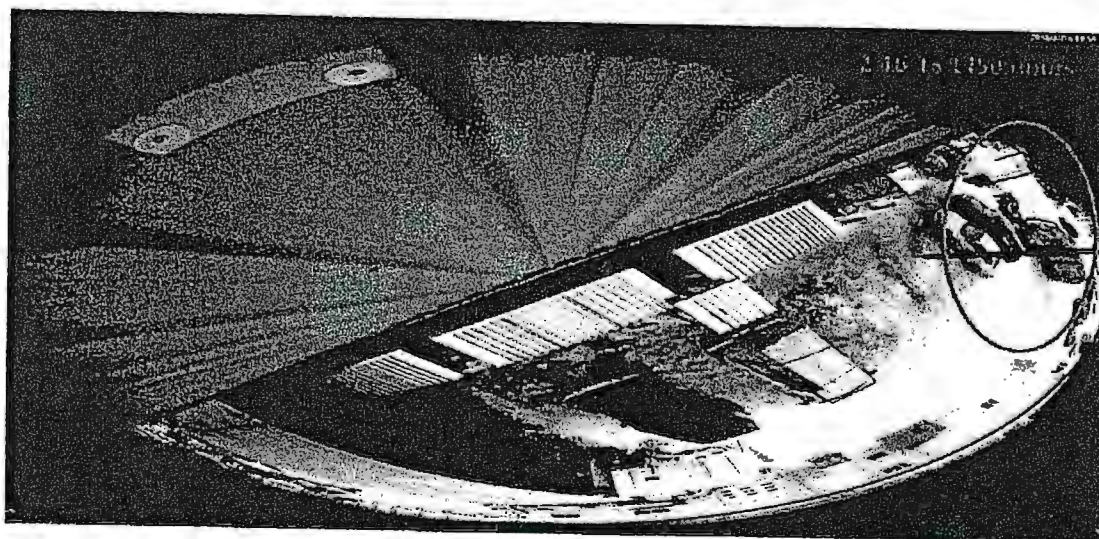
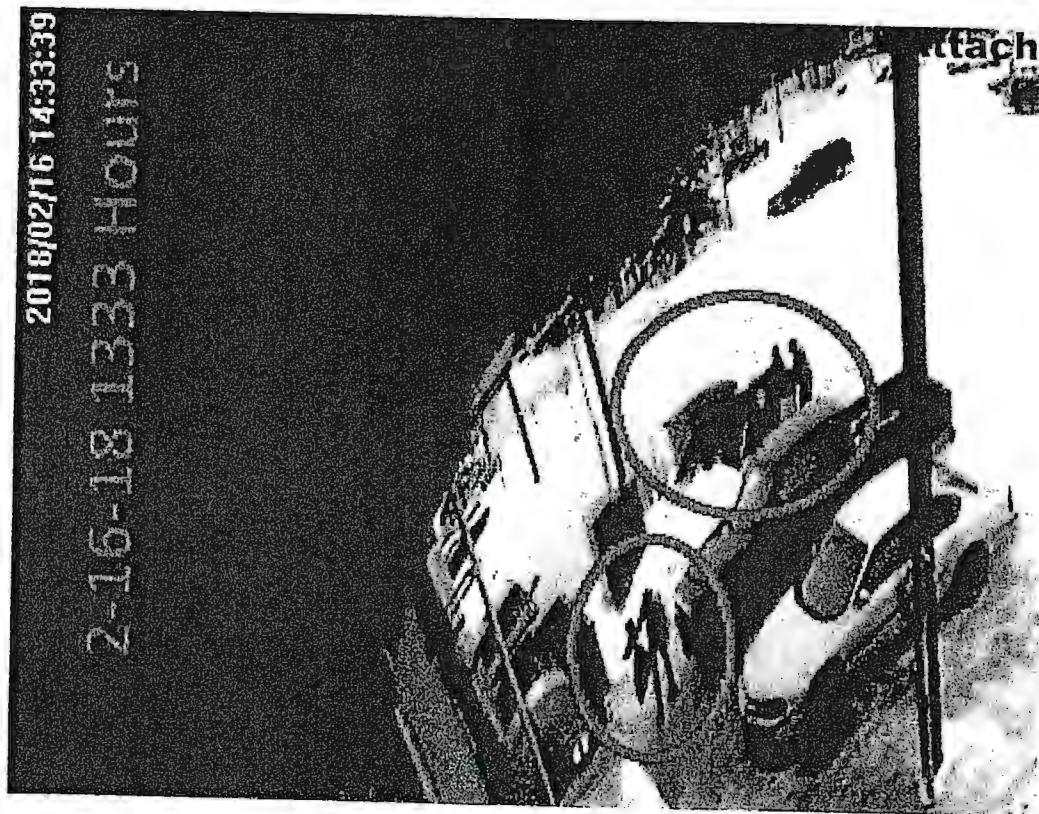




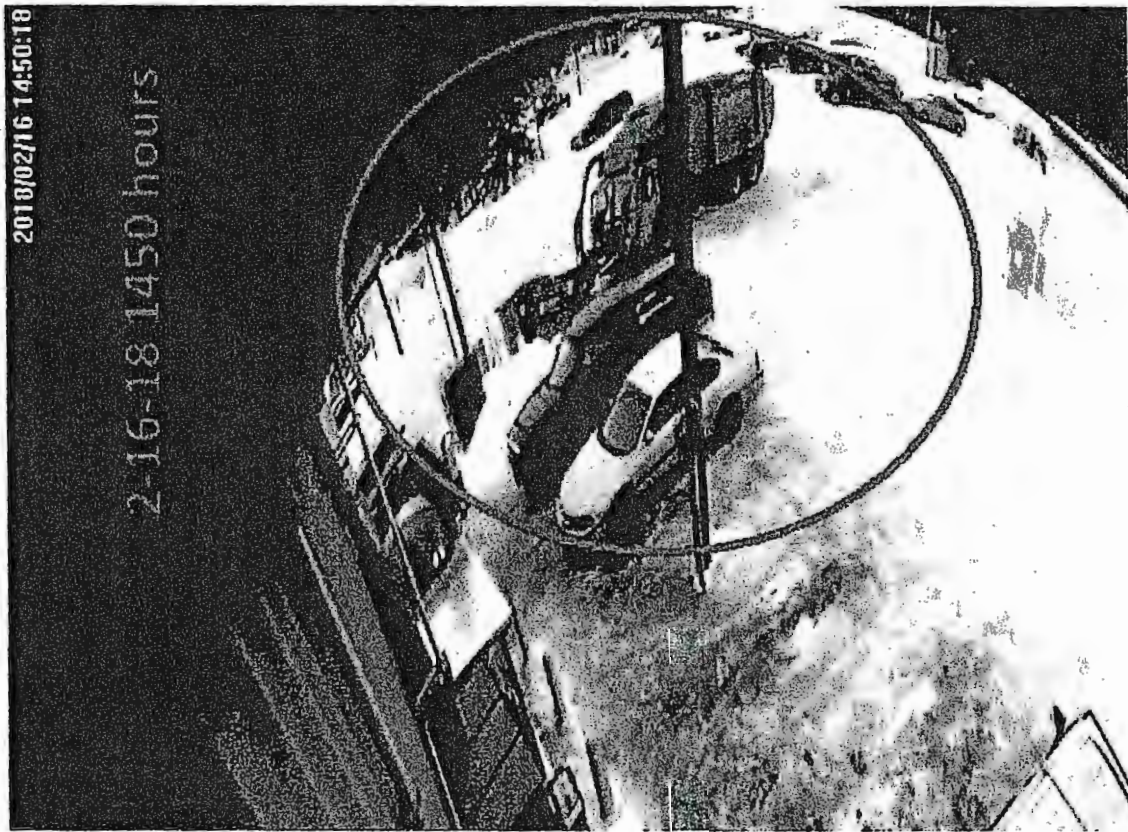
## Attachment I







**Attachment I**





**THE ADMINISTRATIVE HEARING OFFICE  
FOR THE MUNICIPALITY OF ANCHORAGE**

MUNICIPALITY OF ANCHORAGE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	
ALASKASENSE, LLC,	)	
	)	
Defendant.	)	
	)	

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Administrative Hearing Office Case No.: 18-0056  
LUE Case No.: LUE 1183941

**FINAL DECISION AND ORDER**

DATE OF COMPLAINT: June 6, 2018

DATES OF HEARINGS: July 11, 2018 and July 30, 2018

APPEARANCES: Assistant Muncpal Attorney Ryan Stuart for the  
Plaintiff, Municipality of Anchorage

Attorneys Jana Weltzin and Chester Gilmore for  
the Defendant, AlaskaSense, LLC

**Procedural History**

On June 6, 2018, the Municipality of Anchorage Land Use Enforcement Division (“LUE”) filed a Complaint alleging that AlaskaSense, LLC violated Anchorage Municipal Code 21.05.055A.6 (hereinafter “Code” or “AMC”) on the following six days due to detectable marijuana odors at its property line: May 4, May 7, May 8, May 9, May 10, and May 11, 2018. LUE requested that an order be entered directing AlaskaSense to come into compliance and pay \$1,800.00 in civil penalties (\$300.00 per day for six days of violation).



On June 18, AlaskaSense appealed the Complaint and filed a request for a hearing with the Administrative Hearing Office (“AHO”). A hearing before the AHO commenced on July 11 and was continued on July 30, 2018. The Plaintiff was represented by Assistant Municipal Attorney Ryan Stuart, and the Defendant was represented by Attorneys Jana Weltzin and Chester Gilmore. LUE Officers Kevin Collins, Richard Fern, Richard Novy, and Elaine Quiboloy-Reid testified at the hearing, as did AlaskaSense representatives Lorenzo Gonzales, Evan Neal, and Smadar Warden. The hearing was recorded, and all testimony was taken under oath.

The Plaintiff submitted the following exhibits, which were admitted into evidence:

- Exhibit 1: Copy of Public Inquiry Parcel Details for property located at 521 W. Tudor Road
- Exhibit 2: Copy of aerial photo of AlaskaSense, LLC property
- Exhibit 3: Copy of Service Request & Case Summary Report for service request #182076, with a request date of November 30, 2017
- Exhibit 4: Copy of Service Request & Case Summary Report for service request #184704, with a request date of May 4, 2018
- Exhibit 5: Copy of excerpt of application of Smadar Warden to Municipality of Anchorage for Marijuana License and Special Land Use Permit for AlaskaSense, LLC
- Exhibit 6: Copy of excerpt of State of Alaska Operating Plan for AlaskaSense, LLC regarding odor control
- Exhibit 7: Copy of emails dated March 30, 2018 between Jana Weltzin and Kevin Collins regarding marijuana odors
- Exhibit 8: Copy of Service Request & Case Summary Report for Case #LUE118391, with a request date of June 5, 2018
- Exhibit 9: Copy of Certified Mail showing receipt of Complaint by Jana Weltzin on June 7, 2018
- Exhibit 10: Copy of excerpt of AMC 21.05.055, with portion regarding ventilation highlighted
- Exhibit 11: Copy of Request for Hearing submitted by Jana Weltzin on behalf of AlaskaSense, LLC on June 18, 2018

The Defendant did not submit any exhibits.

In its defense, AlaskaSense claimed that AMC 21.05.055.A.6 is unconstitutionally vague, and even if it were not, the Municipality failed to establish violations of the ordinance on each of the six days at issue. The Municipality disputed each of these arguments.



## Background

1. LUE is charged with enforcing the zoning laws and regulations of the Municipality of Anchorage (“Municipality”). Its duties include investigating complaints of alleged violations of the municipal zoning code, including those concerning marijuana establishments.

2. Under the zoning code, marijuana establishments are required to be ventilated such that the “odor of marijuana cannot be detected by a person with a normal sense of smell at any lot line” of the establishment. AMC 21.05.055A.6.

3. Smadar Warden is the sole owner and Chief Executive Officer of AlaskaSense, LLC (“AlaskaSense”), a marijuana cultivation facility located at 521 Tudor Road (“Property”).<sup>1</sup> She holds a license and special land use permit from the Municipality to operate the cultivation facility.

4. Evan Neal is the Chief Operating Officer of AlaskaSense, and Lorenzo Gonzalez is the Chief Financial Officer.

5. The Property is bounded by Tudor Road to the south, Bering Street to the west, and property containing a municipal maintenance shop to the north (Ex. 2).

6. In November of 2017, LUE assigned Officer Kevin Collins to investigate concerns about potential marijuana odors from the AlaskaSense facility. Officer Collins documented his investigation in several Service Request and Case Summary Reports (hereinafter “Case Summaries”), which appear as Exhibits 3, 4, and 8. The Case Summaries identify the dates Officer Collins, Officer Richard Fern, and Officer Richard Novy visited the Property to inspect for odors and the observations they made during their visits.

7. Referring to the Case Summaries, Officer Collins testified about the history of LUE’s inspections of the Property, beginning with his first inspection on November 28, 2017. He and Mr. Neal were on the west side of the AlaskaSense facility that day when Officer Collins mentioned smelling a strong marijuana odor. Mr. Neal did not notice the odor initially, but he agreed he could detect some odor after several minutes and said he would check the facility’s ventilation equipment (Ex. 3).

8. On December 5, LUE received a new complaint alleging that a strong marijuana odor could be smelled on the other side of Tudor Road from the Property.

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<sup>1</sup> Ms. Warden is also the sole owner of Cannabaska, a marijuana retailer located at the Property.



Officer Collins discussed the complaint with Mr. Neal, who advised that he would have his engineers look into the situation (Ex. 3).

9. On December 19, Officer Collins informed Mr. Neal that he would need a corrective action plan that identified how AlaskaSense intended to address odors from the facility (Ex. 3).

10. On December 22, Officer Collins visited the Property again and did an inspection with Mr. Gonzalez present. The entry in the Case Summary for that day reflects that Mr. Gonzalez agreed that the southwest corner of the Property smelled of marijuana, which Officer Collins had Mr. Gonzalez notate in the facility's smell log. Mr. Gonzalez showed Officer Collins receipts for the purchase of four ionizers to remove odors at the facility, one of which had already been installed, and three of which were to be delivered in January (Ex. 3). Officer Collins decided to wait and see if the ionizers would be effective in eliminating marijuana odors before issuing a citation.

11. On January 9, 2018, Officer Collins drove through the AlaskaSense parking lot and smelled marijuana on Bering Street by the southwest corner of the Property. He went across Tudor Road to a commercial plaza and noticed the odor of marijuana there, too. He informed Mr. Neal of the continued smell problem, to which Mr. Neal replied that the ionizers would be delivered in several weeks (Ex. 3).

12. On January 31, Officer Collins and Officer Fern conducted an inspection concerning the facility's waste disposal. During the inspection, they provided Ms. Warden with a copy of the facility's operating plan, which stated that there would be no marijuana smell outside the building (Ex. 3 and 6).

13. On February 7, Officer Collins inspected the perimeter of the Property and did not detect any marijuana odor. He stopped at the municipal maintenance shop across the street and was advised by several workers that they did not remember smelling marijuana in the last week (Ex. 3). Officer Collins said he was hopeful that the odor problem had been remedied.

14. However, on March 30, Officer Collins emailed Ms. Weltzin, attorney for AlaskaSense, to inform her that Officers Fern and Quiboloy-Reid had been to the Property that day and reported smelling a strong marijuana odor. (Ex. 4 and 7). Officer Collins said he wanted Ms. Weltzin to know that her client's efforts at odor control did not appear to be working.

15. On the morning of May 4, Officer Fern learned from his supervisor that employees in the municipal maintenance shop had complained to the maintenance shop

chief about strong marijuana odors that morning. Officer Collins and Officer Fern went to the Property around 11:00 a.m. to inspect for marijuana odors. Referring to the Case Summary in Exhibit 4, Officer Collins testified that he and Officer Fern began at the southeast corner of the Property and drove westbound along the shoulder of Tudor Road at less than 5 mph. The wind appeared to be gusting from the north/northwest, based on their observations of flagging attached to survey stakes along the Tudor Road right-of-way ("ROW"). They detected a strong marijuana odor on the southern lot line. After turning northbound onto Bering Street, they did not detect any marijuana odor. Nor did they detect any odor after turning eastbound at the northeast corner of the Property and traveling along the northern lot line (Ex. 4).

16. On May 7 at approximately 12:30 p.m., Officer Fern and Officer Novy conducted another site visit, which Officer Collins documented based on information communicated to him by the inspecting officers (Ex. 4).<sup>2</sup> Referring to the Case Summary, Officer Collins said that Officers Fern and Novy detected a heavy marijuana odor at the southeast corner of the Property and along the southern lot line. The wind appeared to be gusting from the north and west, based on the officers' observations of flagging in the Tudor ROW. They did not detect any marijuana odors on either the western or northern lot line. To leave the Property, they headed south on Bering Street and then turned eastbound on Tudor. While in the far right lane, both officers smelled a heavy marijuana odor directly south of the southeast corner of the Property (Ex. 4).

17. On May 8 at approximately 12:15 p.m., Officer Collins and Officer Fern conducted another odor inspection, which Officer Collins again documented (Ex. 4). Officer Collins explained that they followed the same route taken during the May 4 and 7 visits, beginning at the southeast corner of the Property and slowly traveling westbound on the Tudor ROW. Referring to the Case Summary, Officer Collins said the wind appeared to be light but blowing consistently from the north, based on the officers' observations of the flagging in the ROW. Both officers smelled a strong odor of marijuana along the entire southern ROW, but the odor dissipated when they turned north onto Bering Street. They did not smell marijuana on the northern lot line. As the officers headed back south on Bering Street and turned eastbound onto Tudor, however, they detected marijuana odors across the street from the Property, which dissipated as they traveled further east (Ex. 4).

18. On May 9 at approximately 11:15 a.m., Officer Collins and Officer Fern made another site visit, also documented by Officer Collins (Ex. 4). Officer Collins

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<sup>2</sup> Officer Fern explained that entries in a Case Summary are typically prepared by the officer assigned to the case – in this instance, Officer Collins. Officer Collins prepared the entries for the inspections in which he did not participate based on information provided to him by the inspecting officers.



explained that they drove slowly westbound along the Tudor Road ROW and smelled a strong marijuana odor as they approached the southeast corner of the Property. The odor continued until they turned north onto Bering Street. The winds were moderate out of the north/northwest, based on their observations of the nearby survey flagging (Ex. 4).

19. On May 10 at approximately 1:30 p.m., Officer Collins and Officer Fern conducted another inspection, which Officer Collins also documented (Ex. 4). Officer Collins explained that the wind appeared to be from the south, according to the officers' observations of flagging in the Tudor ROW. They followed the same route taken during their prior May visits. They did not smell marijuana along the southern or western lot lines but detected a strong marijuana odor after turning east from Bering Street. The odor persisted as they drove along the northern lot line (Ex. 4).

20. On May 11 at approximately 2:00 p.m., Officer Collins and Officer Novy conducted another odor inspection of the Property, which Officer Collins documented (Ex. 4). Officer Collins said the officers followed the same route taken during the prior site visits in May. From the survey flagging in the Tudor ROW, the wind appeared to be blowing from the south/southeast. The officers did not detect any marijuana odor as they drove south along Tudor, but there was a strong odor when they turned north onto Bering Street. The odor persisted as they turned east and drove along the northern lot line (Ex. 4).

21. Officer Fern testified that Officer Collins' descriptions of the May 4, May 7, May 8, May 9, and May 10 site visits, in which he participated, were consistent with his recollection of those visits and his observations. (Ex. 4). Officer Novy similarly testified with regard to Officer Collins' descriptions of the May 7 and May 11 site visits, in which he participated.

22. Although the Complaint cited AlaskaSense for only six days of alleged violation in May, Officer Collins claimed the facility could have been cited for violations occurring prior to that time; however, LUE wanted to give AlaskaSense ample opportunity to come into compliance before taking enforcement action.<sup>3</sup> He said the complaint was issued only after the "many, many times we tried to get the problem corrected. . . "and "[i]t did not appear to be happening or even going in the direction of being corrected."

23. On cross-examination, Officers Collins, Fern, and Novy acknowledged that the Municipality did not provide them training on detecting marijuana odors. However, they testified that they visited multiple marijuana facilities in the course of their municipal duties, and they are familiar with and confident in their ability to detect the smell of marijuana.

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<sup>3</sup> Officer Collins testified that marijuana odors were also detected on subsequent site visits by LUE (Ex. 8). Thus, he maintained that LUE could have cited AlaskaSense for violations after May 11, but it chose not to do so.

24. The officers also testified on cross-examination that they were unaware of any definition of a “normal sense of smell,” with Officer Novy stating, “Everybody is a little different, I suppose,” and Officer Fern stating, “I can’t calibrate my nose.” Nevertheless, Officer Fern maintained that AMC 21.05.055A.6 is not difficult to apply. Explaining that he has a diminished sense of smell due to a deviated septum and multiple sinus surgeries, he claimed that if he can smell marijuana, most other people can, too. Further, he described procedures LUE has put into place to improve the quality of its odor inspections, including following the same route during all inspections of a given facility, identifying on-site environmental conditions using available indicators (e.g., wind speed and direction based on nearby flagging), and assigning two officers to each inspection because “two noses are better than one.” He said that if there was any question about an odor – for example, if one officer smelled marijuana at a lot line but the other did not – a citation would not be issued.

25. In response to a question as to why a citation was not issued on May 4 at the time the violation was detected, Officer Fern explained that LUE wanted to see if the odor problem continued. If there was no detectable odor after that day, the problem would not have been considered ongoing, and a violation would not have been charged. He said he recognizes the seriousness of finding a facility to be in violation and does not issue citations lightly.

26. When asked by Ms. Weltzin how he could be sure that odors detected during the inspections were not from other marijuana grows, Officer Fern responded that the officers relied on environmental factors such as wind direction to determine the likely source of the odors. He and Officer Novy admitted that they did not know how many legal or illegal grows were in the area.

27. Ms. Weltzin noted that the Amended Complaint for the alleged May 7 violation contains some information not in the Case Summary for that day. Specifically, the Amended Complaint states that the marijuana odor “dissipated almost immediately” as the officers left the area. Upon questioning, Officer Fern did not know the basis for the statement but surmised that he or Officer Novy may have mentioned it to Officer Collins.

28. As the Chief Operations Officer of AlaskaSense, Mr. Neal is in charge of the operational functions of the facility and marijuana cultivation. He and Mr. Gonzalez testified that the facility has made taken many steps to prevent odor problems. These steps include sealing leaks and holes in the building, installing a new HVAC system, purchasing multiple air mitigators, and working with engineers. More recently, the facility began using coffee grinds and roasting coffee beans in an outdoor industrial grill to mask marijuana odors. Mr. Neal and Mr. Gonzalez estimated that the company had incurred at least \$300,000.00 to control odors.



29. As for the six days of alleged violations in May, Mr. Gonzalez testified that he was at work on those days. He walked the perimeter of the facility on each of the days, as he typically does to check for trash. He said he believes he has a normal sense of smell. He did not smell any marijuana outside the facility on any of the six days. When later asked if he ever smelled marijuana outside the facility, he replied that he did not with the exception of December 22, 2017, when he was with Officer Collins and made an entry in the smell log. He remembered a slight marijuana odor that day, which he claimed was not surprising because it was the facility's first harvest, and a door to the retail store had just been opened. He said the odor was gone when he checked the perimeter of the Property later that day. Other than December 22, he did not smell marijuana outside the facility or make any other entries in the smell log.

30. Mr. Stuart asked why the facility was roasting coffee beans if there were no odors outside the facility. Mr. Gonzalez replied that the company was trying to address the Municipality's concerns. He stated:

It's not my nose that's the problem. I smoke weed every day. My car smells like weed. I probably smell like weed right now. So I don't know if I'm "nose blind," but they have smelled weed.

31. Like Mr. Gonzalez, Mr. Neal testified that he was at work on each of the six specified days in May. He walked the perimeter of the grounds to check for overall compliance in accordance with his standard practice. He said he believes he has a normal sense of smell. He did not remember smelling marijuana outside the facility on those days. When asked whether he met with Officer Collins and smelled marijuana outside on November 18, 2017, he did not recall that specific meeting but described it as "an example of the one-time" he may have smelled marijuana outside the building. However, he later explained that he "is not a good judge" of the presence of marijuana odors and it is "not something I notice" because "it's something I have in my nose a lot throughout the day."

32. There was discussion at the hearing about the smell log for the facility. The facility's security personnel are tasked with documenting in the smell log any marijuana odors they detect outside the facility. Mr. Neal explained that the security staff are stationed in a portion of the facility separate from the cultivation and dispensary areas; thus, "we figured their noses would probably be the most clear for this process." Mr. Neal testified that he reviewed the smell log in the past but not recently. He did not recall whether he reviewed the log since May 4, and he did not remember whether any observations of marijuana odors were recorded in it. The smell logs were not produced at the hearing.

33. Mr. Neal, Mr. Gonzalez, and Ms. Warden said they were not aware of any definition of a normal sense of smell. They were not aware of any complaints about odors from the facility other than the Municipality's complaints. Mr. Neal described AlaskaSense as a "fledgling business in a fledgling industry within the first three to four months of operation" at the time of the infractions at issue. He stated that whenever the Municipality had an issue, AlaskaSense "always complied, always allowed for inspections, always provided documentation after the fact" to show good faith that they were trying to do the right thing.

34. Mr. Gonzalez testified that the facility obtained its cultivation license in August of 2017 and began growing marijuana in September, with the first crop ready for harvest in November of that year.

35. There was discussion at the hearing about the "zero tolerance" threshold for marijuana odors in AMC 21.05.055A.6. Ms. Weltzin commented that she is unaware of any jurisdictions with such a strict threshold. She said some other jurisdictions have quantified the level of marijuana odors deemed to be unacceptable, while others have established a nuisance standard. Officer Fern discussed a device he described as an "artificial nose" used to quantify the level of marijuana odors detected in some jurisdictions.

### Discussion

36. AMC 21.05.055A establishes standards applicable to all marijuana establishments in the Municipality, including marijuana cultivation facilities.<sup>4</sup> Subsection 6 pertains to odors and states as follows:

6. *Ventilation.* The premises shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at any lot line of the subject property.

#### **A. The AHO Lacks Jurisdiction Over Defendant's Constitutional Claim.**

37. AlaskaSense asserts that the AHO has jurisdiction to rule on the constitutionality of AMC 21.05.055A.6, and the ordinance is void and unenforceable because the "normal sense of smell" standard renders it unconstitutionally vague. The

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<sup>4</sup> A marijuana cultivation facility is defined in AMC 21.05.055B.1 as a "facility that cultivates and harvests marijuana for transfer or sale to a marijuana manufacturing facility, a marijuana testing facility, or a marijuana retail sales establishment."



Municipality disputes both arguments.

38. The role of the AHO is to “consider and apply regulatory enactments and polices” under the Code. See AMC 14.20.010. The AHO’s jurisdiction is set forth in AMC 14.20.020. This section allows the AHO to issue decisions, assess penalties, and issue compliance orders based on an interpretation of various Code provisions. But it does not afford the AHO the authority to rule on the constitutionality of those provisions.<sup>5</sup> Thus, I conclude that the ruling AlaskaSense seeks on the constitutionality of AMC 21.05.055A.6 exceeds my authority. However, AlaskaSense has made a good record of the constitutional issues through its briefing and at hearing and may pursue those arguments if it so chooses in an appeal to the Alaska Superior Court, where the constitutional issues can be properly considered.

**A. The Municipality Established That Violations of AMC 21.05.055A.6 Occurred On May 4, May 7, May 8, May 9, May 10, and May 11, 2018.**

39. LUE has the burden of establishing by a preponderance of the evidence that violations of AMC 21.05.055A.6 occurred on the six specified days in May of 2018. The preponderance of the evidence standard is the equivalent of proving that something is “probable” or “more likely than not.” *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696; 699 (9th Cir. 2007); *Holton v. States*, 602 P. 2d 1228, 1238 & n. 17 (Alaska 1979); see also Alaska Civil Pattern Jury Instruction §2.04.

40. In evaluating whether the Municipality has met its burden of proof, I find that the officers were capable of detecting the presence of marijuana odors. Although they did not receive training from the Municipality on detecting marijuana smells, they testified that they have visited multiple marijuana establishments in the regular course of their work duties, they are familiar with the distinct odor of marijuana, and they are confident in their ability to detect it. Moreover, while there is no Code definition of a “normal sense of smell,” there was no evidence to suggest that the officers’ senses of smell fell outside the range of what would commonly be understood to be normal, ordinary, or regular. The only exception may be Officer Fern, whose sense of smell is less than that of the average person; thus, while he could have missed an odor from the AlaskaSense facility due to his diminished sense of smell, I am persuaded that he was not likely to have detected an odor unless it actually existed.

41. As for whether there were detectable marijuana odors at one or more lot line on each of the six days, I placed considerable weight on the testimony of Officer Collins, Officer Fern, and Officer Novy. The officers testified consistently with each other and

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<sup>5</sup> AMC 14.20.020 does not afford the AHO general equitable powers, unlike the original jurisdiction of the Superior Court. Compare AMC 14.20.020 with AS § 22.10.020.

with the detailed Case Summaries prepared shortly after their inspections, when the details of the inspections were likely to be fresh in their memories. As the Case Summaries reflect, the officers employed a systematic process in inspecting for odors by following a consistent route along the perimeter of the Property, using two officers rather than one, and considering relevant on-site environmental conditions. This process increased the likelihood that their observations would be accurate and their resulting conclusions reliable. The reliability of their determinations is further supported by their testimony that a citation would not have been issued if there was any doubt about the presence of an odor and the fact that they gave AlaskaSense many months to comply before the Complaint was issued.

42. In comparison, I placed relatively less weight on the less specific testimony of Mr. Neal and Mr. Gonzalez. Although Mr. Gonzalez said he did not detect any marijuana odors outside the facility on the six days at issue, and he only ever smelled marijuana outside the facility once, he acknowledged that he may be “nose blind” to the odor because he uses marijuana and is around it daily. Similarly, Mr. Neal, who did not recall ever smelling marijuana outside the facility, acknowledged that he is “not a good judge” of marijuana odors because the smell is in his nose so often. The smell logs could potentially shed light on Mr. Gonzales’ and Mr. Neal’s claims, but they were not submitted at the hearing.

43. With regard to the alleged violation on May 4, I find that the evidence establishes that a violation of AMC 21.05.055A.6 occurred that day. Specifically, Officer Collins’ and Officer Fern’s testimony is supported by detailed documentation of the route they followed during the inspection, their location when they smelled marijuana (on the southern lot line but not the western or northern lot lines), and the direction of the wind (from the north/northwest) as personally observed by them from nearby flagging. Although it is possible that the odors the officers detected were from other marijuana grows, I consider this unlikely given the proximity of the odors to the AlaskaSense facility and the prevalent wind direction, which was consistent with AlaskaSense as the likely source of the odors. Thus, I find the totality of the evidence sufficient to satisfy LUE’s burden of proof for the May 4 violation.

44. I reach a similar conclusion regarding to the alleged violations on the remaining dates. As stated above, the evidence shows that the officers followed a consistent route along the perimeter of the Property, starting at the southeast corner, then traveling westbound along the southern boundary, next heading north on Bering Street, then traveling east on the northern boundary, and finally turning around and usually following the route in reverse order. In each instance, the officers documented the specific location in which they detected marijuana odors and their personal observations of the wind speed and direction used to identify the likely source of the odors. I find the totality of the



evidence sufficient to establish that violations of AMC 21.05.055A.6 occurred on May 7, May 8, May 9, May 10, and May 11, 2018.

45. With regard to the “zero tolerance” threshold in AMC 21.05.055A.6, my task as the quasi-judicial AHO is to interpret and apply the ordinance as written to the facts of this case. Disagreement with the ordinance language is a matter that concerned citizens are free to discuss with the Anchorage Assembly, the legislative arm of our municipal government with the authority to adopt and amend the Code.

46. LUE has the burden of establishing by a preponderance of the evidence that AlaskaSense violated AMC 21.05.055A.6 on the six specified days in May of 2018, and it has done so.

### Order

1. The Complaint of Municipal Code Violation is affirmed with regard to the six days of violation of AMC 21.05.055A.6. Defendant is ordered to ventilate the premises on or before **September 12, 2018** so that the odor of marijuana cannot be detected by a person with a normal sense of smell at any lot line of the subject property.

2. Defendant is ordered to pay a civil fine in the amount of **\$1,800.00** (6 violations x \$300.00 per violation.) The fine may be paid in person at Municipality of Anchorage (hereinafter MOA), Treasury Division, DCF, 632 W. 6th Avenue, Third Floor, Suite 350 or by mail to: Treasury Division, DCF, P.O. Box 196650, Anchorage, AK 99519-6650. If not paid in full within thirty (30) days from the date of this final order, a one-time late payment fee of \$25.00 will be assessed. Interest on fines and assessments not paid within 30 days of the decision shall accrue at the rate of 8% per year pursuant to code. Pursuant to AMC 6.70.125 adopted November 9, 2010, if your account is referred to an outside collection agency, a collection fee will be added to the outstanding balance of the account.

3. The Administrative Hearing Officer retains jurisdiction in this matter for the purpose of monitoring compliance and ordering additional relief and/or assessing additional penalties, if appropriate.

4. Upon request filed with the Administrative Hearing Officer by the Municipality’s representative pursuant to AMC 14.50.010(C), the Administrative Hearing Officer may impose the suspended portion of the fine levied in paragraph 2 above and further order additional civil fines payable to the Municipality in the amount of \$250.00 for each day defendant is in violation and that the remedial measures ordered in paragraph

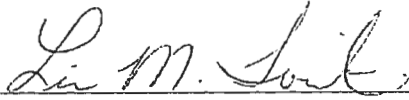
1 above remain uncompleted or the violations continue to occur.

5. This matter may be reset for further hearing and/or imposition of penalties referred to in paragraphs 2 and 4 of this Order upon the motion of either party or the hearing officer's own motion.

This Final Decision and Order has been mailed to the parties on the effective date below and is effective immediately.

This is a final order. The parties have thirty (30) days from the effective date below to appeal this decision to the Superior Court, Third Judicial District, State of Alaska, pursuant to Rule 602(A)(2), of Appellate Rules of Procedure.

DATED and effective as of this 22<sup>nd</sup> day of August, 2018, Anchorage, Alaska.

By:   
Lisa M. Toussaint  
Administrative Hearing Officer

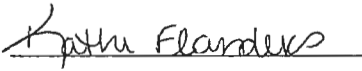
Certificate of Service

I, Kathi Flanders, hereby certify that I mailed a true and correct copy of the foregoing to:

Jana Weltzin, Attorney for AlaskaSense  
3003 Minnesota Drive Suite 201  
Anchorage AK 99503

Municipality of Anchorage/Land Use Enforcement

on this 22<sup>nd</sup> day of August, 2018.





# Alcohol & Marijuana Control Office

Initiating License Application

5/10/2019 11:26:37 AM

**License Number:** 10236

**License Status:** Active-Operating

**License Type:** Retail Marijuana Store

**Doing Business As:** CANNABASKA

**Business License Number:** 1050634

**Designated Licensee:** Smadar Warden

**Email Address:** smadi.cannabaska@yahoo.com

**Local Government:** Anchorage (Municipality of)

**Community Council:** Midtown

**Latitude, Longitude:** 61.105196, -149.533691

**Physical Address:** 521 W. Tudor Road, Unit 201  
Anchorage, AK 99503  
UNITED STATES

## Licensee #1

**Type:** Entity

**Alaska Entity Number:** 10036813

**Alaska Entity Name:** AlaskaSense, LLC

**Phone Number:** 907-903-3534

**Email Address:** cannabaska@gmail.com

**Mailing Address:** 521 W Tudor Road  
Anchorage, AK 99503  
UNITED STATES

## Entity Official #1

**Type:** Individual

**Name:** Smadar Warden

[REDACTED]

[REDACTED]

**Phone Number:** 907-903-3534

**Email Address:** cannabaska@gmail.com

**Mailing Address:** 521 W Tudor Road  
Anchorage, AK 99503  
UNITED STATES

**Note:** No affiliates entered for this license.



Alaska Marijuana Control Board

## Form MJ-20: Renewal Application Certifications

### What is this form?

This renewal application certifications form is required for all marijuana establishment license renewal applications. Each person signing an application for a marijuana establishment license must declare that he/she has read and is familiar with AS 17.38 and 3 AAC 306. A person other than a licensee may not have direct or indirect financial interest (as defined in 3 AAC 306.015(e)(1)) in the business for which a marijuana establishment license is issued, per 3 AAC 306.015(a).

This form must be completed and submitted to AMCO's main office by each licensee (as defined in 3 AAC 306.020(b)(2)) before any license renewal application will be considered complete.

### Section 1 – Establishment Information

Enter information for the licensed establishment, as identified on the license application.

Licensee:	AlaskaSense, LLC	License Number:	10236		
License Type:	Retail Marijuana Store				
Doing Business As:	Cannabaska				
Premises Address:	521 W. Tudor Road, Unit 201				
City:	Anchorage	State:	Alaska	ZIP:	99503

### Section 2 – Individual Information

Enter information for the individual licensee who is completing this form.

Name:	Smadar Warden
Title:	Manager, Member

### Section 3 – Violations & Charges

Read each line below, and then sign your initials in the box to the right of any applicable statements:

Initials

I certify that I have **not** been convicted of any criminal charge in the previous two calendar years.

I certify that I have **not** committed any civil violation of AS 04, AS 17.38, or 3 AAC 306 in the previous two calendar years.

I certify that a notice of violation has **not** been issued for this license.

Sign your initials to the following statement only if you are unable to certify one or more of the above statements:

Initials

I have attached a written explanation for why I cannot certify one or more of the above statements, which includes the type of violation or offense, as required under 3 AAC 306.035(b).



**Form MJ-20: Renewal Application Certifications****Section 4 – Certifications**

Read each line below, and then sign your initials in the box to the right of each statement:

Initials

I certify that no person other than a licensee listed on my marijuana establishment license renewal application has a direct or indirect financial interest, as defined in 3 AAC 306.015(e)(1), in the business for which the marijuana establishment license has been issued.

I certify that I meet the residency requirement under AS 43.23 or I have submitted a residency exception affidavit (MJ-20a) along with this application.

I certify that this establishment complies with any applicable health, fire, safety, or tax statute, ordinance, regulation, or other law in the state.

I certify that the license is operated in accordance with the operating plan currently approved by the Marijuana Control Board.

I certify that I am operating in compliance with the Alaska Department of Labor and Workforce Development's laws and requirements pertaining to employees.

I certify that I have not violated any restrictions pertaining to this particular license type, and that this license has not been operated in violation of a condition or restriction imposed by the Marijuana Control Board.

I certify that I understand that providing a false statement on this form, the online application, or any other form provided by or to AMCO is grounds for rejection or denial of this application or revocation of any license issued.

As an applicant for a marijuana establishment license renewal, I declare under penalty of unsworn falsification that I have read and am familiar with AS 17.38 and 3 AAC 306, and that this application, including all accompanying schedules and statements, is true, correct, and complete. I agree to provide all information required by the Marijuana Control Board in support of this application and understand that failure to do so by any deadline given to me by AMCO staff may result in additional fees or expiration of this license.

Signature of licensee

  
**Smadar Warden**

Printed name of licensee

Notary Public in and for the State of Alaska

My commission expires:

  
4/7/22Subscribed and sworn to before me this 10 day of May, 2019.