THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

ALCOHOL AND MARIJUANA CONTROL OFFICE
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MEMORANDUM

TO: Chair and Members of the Board

DATE: December 5, 2022

FROM: Joan M. Wilson
AMCO Director

RE: Wildflower 21069
Onsite Consumption
Endorsement

Requested Action: Review of Onsite Consumption Endorsement Application within the City of Kodiak and the Kodiak Island Borough by Three Sisters, LLC dba Wildflower

Statutory and Regulatory Authority: (Subjects for Board discussion italicized)

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

(a) Unless prohibited by local or state law, the board may approve an onsite consumption endorsement for a licensed retail marijuana store for consumption, on the marijuana retail store premises, (1) of edible marijuana product only, in compliance with this section, in an indoor or outdoor area, regardless of whether the licensed retail marijuana store is freestanding; (2) by any method, in compliance with this section, in an indoor or outdoor area of a freestanding licensed retail marijuana store.
….

(e) A marijuana consumption area must have the following characteristics:

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

(2) the licensed marijuana retail store must provide a smoke-free area for employees to monitor the marijuana consumption area;

(3) a marijuana consumption area that is indoors and in which smoking is permitted must have a ventilation system (A) that is separate from the ventilation system of the other areas of the licensed retail marijuana store or other licensed marijuana establishments in a freestanding building; and (B) 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, the marijuana consumption area must 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, if consumption by smoking is permitted; (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.

(f) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the endorsement fee set out in 3 AAC 306.100, and

(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 21 years of age; (B) ventilation, if consumption by smoking is to be permitted in an indoor area; 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 are 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) the 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; and

(4) for an outdoor marijuana consumption area, (A) 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.

(g) 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, at no cost to patrons, written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in the marijuana consumption area; (5) package and label all marijuana or marijuana products 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.

AS 18.35.301(i)(1)

"freestanding" means a building that is not supported by another structure and does not share ventilation or internal air space with an adjoining structure and smoke from the building cannot travel into the adjoining structure;

3 AAC 306.990. Definitions

(a) In AS 17.38 and this chapter,
(42) "freestanding" (A) has the meaning given in AS 18.35.301(i)(1); (B) does not include a building that contains a tenant other than one or more licensed marijuana establishments owned by the same business, individual, or group of individuals that seeks an onsite consumption endorsement;

Application History

Date Application Initiated: December 14, 2021

Date Under Intake Review: August 16, 2022

Incomplete Notice: August 16, 2022

Date Deemed Complete: December 6, 2022

Date Notes Sent: Outstanding

Local Government Response Date: Outstanding

AMCO Review: This application presents a question of first impression regarding whether: (1) an onsite consumption area can be within the retail store's licensed premises, but accessed by exiting the building, walking into a courtyard, and then entering a separate airstream trailer, that is, does it have access solely from the retail store; and (2) whether an airstream trailer is a freestanding building. This will be determined by local government code. At issue is whether an airstream trailer or other formally mobile structure that it is deemed unmovable and is affixed to the land, may be considered a freestanding building. Stamped Ventilation drawings are also attached for the Board's review.

AMCO makes no specific recommendation, with the understanding that regulatory interpretation is a question for this Board. The licensee and counsel will be available to address outstanding questions.