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Re: Proposal for New Regulation 3 AAC 306.380 – Exterior Window Pick Up

Dear Honorable Members of the Alaska Marijuana Control Board:

Please consider, with an amendment described *infra,* voting to approve this new regulation, 3 AAC 306.380 to allow for exterior window pick up for retail licensees. This new regulation would allow for retail stores to provide exterior window/walk up service to customers. This regulation would allow an endorsement onto existing retail marijuana store licenses, so they can once again provide this much- needed service to legal consumers of marijuana in Alaska.

Recreational/Adult Use Marijuana is now legal in twenty- one states and the District of Columbia. Six states currently allow for marijuana retailers to sell recreational cannabis via an exterior window or "drive thru" service. Several of these states, and/or their cannabis regulation board or committee, Arizona, New Mexico, and Michigan do not interfere with any zoning issues related to permitting exterior window/drive-thru service, parking, traffic flow, etc.; they defer that decision to the local communities and governing bodies. Therefore, if a local community determines that an exterior window is not a good fit for their community, they can make rules to not allow for it. Given the diverse terrain of Alaska, allowing for a model that allows for older folks to not have to walk on icy roads or uneven surfaces makes sense for Alaska.

The Alaska Marijuana Control Board enacted 3 AAC 306.995 for use during COVID and repealed it when COVID restrictions were lifted. However, the repeal negatively impacted customers with mental health, mobility issues, and/or are immunocompromised, as they were no longer able to obtain marijuana without having to get out of the car, especially during the winter, or risk exposure to illness or spreading one by going inside the building.

This repeal also negatively affected retail marijuana shop licensees in several ways. The exterior window eliminated the potential for theft or threat of physical harm from customers towards bud tenders, as they did not have access to marijuana products that they had not already ordered and paid for through the window. Many licensees spent thousands of dollars cutting holes in exterior walls, paying for exterior windows, cameras, and boxes to be installed, as well as driveways paved, and paid for architects, designers, and professional services. They paid significant fees with their cities or municipality, or borough for diagram and operation plan change fees, not including the hours spent planning and executing these renovations.

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If The Marijuana Control Board would allow an Exterior Window/Walk Up Service again for retail marijuana stores, it would have positive impacts on Alaskans with no demonstratable negative consequences to public health and safety, as there are no documented negative impacts of having a marijuana Exterior Window/Walk Up Service. We have researched the states that allow for exterior window pick-ups and have not come across any examples of negative consequences related Exterior Window/Walk Up Service. If anything, COVID revealed a straightforward, low-risk, high-reward option for businesses that reduce public safety risks, increase control of the transaction, protected the safety of budtenders, and quite frankly many customers and business owners alike enjoyed using this option and were sad to see go. This new regulation would safeguard the health and safety of Alaska's cannabis users and business owners by offering purchase options that reduce the likelihood of employee or customer theft. The window would be within the restricted retail space where all cash and marijuana products, customer interactions, and sales are recorded and kept on record for at least 40 days. This allows transactions to occur while protecting the privacy of the consumers. Exterior Window/Walk Up Service sales could be used as another step to prevent legal marijuana from being diverted to the black market, as it assists people who would not be able to get out of their vehicle, walk into the store and make a regular retail purchase to obtain marijuana legally, safely and without compromising any regulations. It would also keep theft to a minimum as the cashier would only have one customer to focus on at a time, and ensure the transaction is completed within the regulatory guidelines before allowing the next sale.

I would recommend that the MCB not approve this regulation change as written. Section 306.380(e) has an arbitrary age limit in regards to minor children in the vehicle. Right now, the regulation draft reads that if there is a minor child in the car, it needs to be the consumer's own child, or grandchild, or ward of that person – and the child needs to be under 7 years of age. First, kids that young typically do not have identification on their person or on their guardian's person, so determine the age of the child is going to be problematic and is not a realistic regulation for implantation purposes. Second, how are budtenders supposed to verify the child is a ward, grandchild, or kid of the adult purchaser? Subsection (e), as currently written, is going to lead to compliance failures due to the fact the regulation section being impractical to implement. I would recommend instead the child must be seated in the back seat and that there be no requirement to verify (or attempt to verify) whether the purchasing adult is the guardian of the child. Further, I would recommend that if there is a child in the front seat of the vehicle, then no sale should be permitted as it would be in direct view of a minor child. All children must be in the back seat to conduct a sale of marijuana product to a consumer. All products should be in opaque and child resistant packaging to ensure the child is not directly exposed to marijuana or marijuana product.

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With Federal legalization looming, it is more important than ever that we take steps to allow local small businesses to flourish as much as possible, while regulating the sale of marijuana. By allowing 3 AAC 306.380 to be enacted, it will be one of many steps to help protect Alaskan owned small businesses be a step or two ahead of the big corporations that will inevitably show up and try to disrupt the market. Your role as regulators is to regulate this industry in a manner that protects health, families, public safety, foster business growth and improve the diversification of our economy. This role can only be fulfilled if small businesses are given every reasonable opportunity to succeed in this industry before Federal legalization happens. To be part of the solution vs. part of the problem, this new regulation needs to be enacted immediately, so business owners can be as a successful as possible in a legal, safe, and regulated manner.

Let's not forget the fact that right now the Alaska Department of Agriculture has allowed and approved intoxicating Delta 9 THC from Hemp edibles to be sold (up to 50 mgs a package) to be sold to any persons, **of any age**, without child resistant packaging – so let's not regulate to death our marijuana licensees who actually understand responsible stewardship of dispensing intoxicating Delta 9 THC products while a state department actively undermines the safety of our children by approving these same types of products to be sold in gas stations (or clothing shops, gift shops, the list goes on and on…) which undercuts good responsible Alaskan licensees, puts our kids' safety at risk, and undercuts the ability of our licensees to generate state and local tax dollars. **If kids want to buy Delta 9 THC products (and Delta 8 THC vapes) they aren't going to ask their parents or older siblings to take them through a licensed marijuana retail drive thru**. The Alaska Department of Agriculture has provided those children with **easy and unchecked access** to those products with zero age restrictions. Additionally, the Dept. of Agriculture has not even sent out notices or enforcement actions to its retailer registrants who are selling 300 mgs THC Delta 9 per package edibles (which are 3 times marijuana legal limits and 6 times the hemp regulation legal limits). So, let's remember that a Department within our state has kicked the door wide open for kids to get high with intoxicating THC products – and that Department is not AMCO or its licensees.

Thank you for your consideration and thank you for your continued hard work, dedication, and commitment to the success of this regulated industry – it is truly appreciated and respected.

Truly and Sincerely Yours,

/s/*Jana D. Weltzin, Esq.*

PUBLIC COMMENT RESEARCH

Nevada – YES

https://ccb.nv.gov/wp-content/uploads/2020/06/Curbside-Industry-Guidance-CCB-00BTW.pdf

https://doh.wa.gov/sites/default/files/2022-02/608035.pdf?uid=62709ab26d2a1

https://lasvegassun.com/news/2021/mar/03/las-vegas-approves-curbside-pickup-for-marijuana-d/

Arizona – YES

2.191.010 (5) (h)

https://azmarijuana.com/stories/arizona-medical-marijuana-zoning-laws/

https://library.municode.com/az/pinal_county/codes/development_services_code_and_floodplain_management_?nodeId=DEVELOPMENT_SERVICES_CODE_TIT2ZO_CH2.191MEMADIREMAESOTEMACULOTEFA

Montana - YES

MCA 16-12-207 (4):

https://leg.mt.gov/bills/MCA/title_0160/chapter_0120/part_0020/section_0070/0160-0120-0020-0070.html

Colorado - YES

Stipulations to DT service – 3 rules article below

https://www.postindependent.com/news/nations-first-drive-through-pot-shop-opens-in-parachute-on-420-of-course/

5.13.033 Cannabis sales – Walk-up and drive-through.
https://www.codepublishing.com/CO/GrandJunction/html/GrandJunction05/GrandJunction0513.html#5.13.033

New Mexico – Yes, just not many yet – Set by City

https://www.krqe.com/news/marijuana/mythbusting-cannabis-in-new-mexico-what-you-need-to-know-ahead-of-april-1/

- Nothing in NM law prohibits it, each city can set its restrictions if they want to

Illinois - NO

Michigan Yes – set by City

https://www.michigan.gov/lara/news-releases/2022/03/07/marijuana-regulatory-agency-implements-new-administrative-rule-sets

Maine - NO

Not now, working on reg change same as AK – medical only for now

Vermont – Inconclusive, Vermont laws are weird.

Controlled by LGB, medical only, maybe one in the whole state. Recreational is new, no DT's yet

New York – NO - just legalized recreational, not yet.

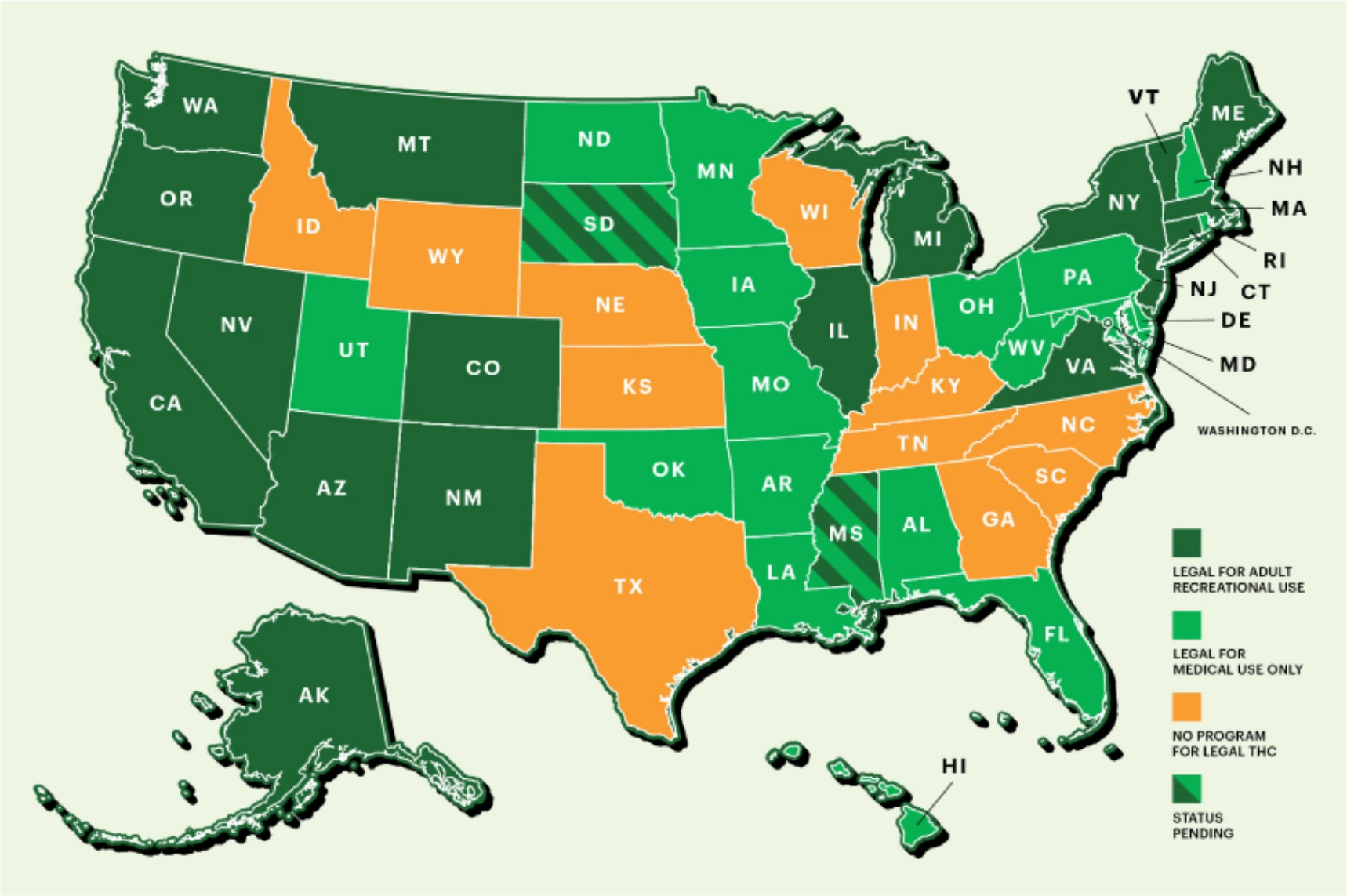
https://cannabis.ny.gov/system/files/documents/2021/09/cannabis-management-fact-sheet-9-21-local-government-06.pdf

Massachusetts – NO

Connecticut- NO

New Jersey – NO

Virginia- NO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LEGAL FOR ADULT RECREATIONAL USE
LEGAL FOR MEDICAL USE ONLY
NO PROGRAM FOR LEGAL THC
STATUS PENDING