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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Micaela Fowler, Department of Commerce, Community and Economic Development

FROM: Scott Meriwether, Office of the Lieutenant Governor 
465.4081

DATE: November 17, 2016

RE: Filed Permanent Regulations: Alcoholic Beverage Control Board
Regulations re: alternating licensed premises (3 AAC 304.225; 3 AAC 304.305(f))

Attorney General File:	JU2016200420
Regulation Filed:	November 16, 2016
Effective Date:	December 16, 2016
Print:	220, January 2017

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

The attached two pages of regulations, dealing with Alternating Licensed Premises, is certified to be a correct copy of the regulation changes that the Alcoholic Beverage Control Board adopted at its July 20, 2016 meeting, under the authority of AS 04.06.090(a) and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments,, the Alcoholic Beverage Control Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date:

10/27/2016


Cynthia A. Franklin, Director

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

November 16, 2016 at 149 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Byron Mallott, Lieutenant Governor

Effective:

December 16, 2016

Register:

220, January 2017

3 AAC 304 is amended by adding a new section to Article 2 to read:

3 AAC 304.225. Alternating Licensed Premises for Certain License Types

~~3 AAC 304 Article 2 "Licensing" is amended to add a new section "Alternating Licensed Premises for Certain License Types"~~

~~3 AAC 304.225 Alternating Licensed Premises for Certain License Types~~

(a) Upon a licensee's written request accompanied by a detailed premises diagram, the board may approve a portion of a premises licensed under AS 04.11.100 ^(lower case) Restaurant ^{or (lower case)} Eating Place License, AS 04.11.115 ^(lower case) Golf Course License, AS 04.11.180 ^(common carrier dispensary license) Common Carrier License, AS 04.11.210 ^(lower case) Recreational Site License, AS 04.11.225 ^(lower case) Outdoor Recreational Lodge License, AS 04.11.255 ^(cap) Destination Resort License, or AS 04.11.400(d) ^(lower case) Beverage Dispensary Tourism License or ~~Restaurant Eating Place Tourism License~~ to alternate as licensed or unlicensed premises under the following conditions:

^(two 0.5" tabs)) (1) approval will be granted only if the board finds that use of the identified area as alternating premises will stimulate tourism or promote activities open to the general public;

^(two 0.5" tabs)) (2) a debt that is incurred during times when the identified area is unlicensed will be considered a debt incurred in the operation of the licensed business for purposes of transfer of the license under AS 04.11.360;

^(two 0.5" tabs)) (3) at any time with written notice to the licensee, the board ^(use normal font and color; omit underline and link)) ~~has the discretion, for any reason, to~~ ^(may) withdraw its approval of use of the identified area as alternating premises;

^(two 0.5" tabs)) (4) caterer's permits issued under AS 04.11.090 ^(use normal font and color; omit underline and link)) may be exercised in the alternating area during times the identified area is unlicensed premises; ~~and~~

^(two 0.5" tabs)) (5) during times the identified area is designated as an unlicensed premises, all alcoholic beverages must either be removed from the identified area or be stored in ^(a) location approved by the board to be secure from the public ^(3; and)

11 Two 0.5" tabs

(6) A licensee may apply hours that it is operating as an alternating unlicensed premises to meet

the operating requirement set forth in AS 04.11.330(a)(3). (EFF. 12/16/2016, Register 220)

AS 04.06.090

AS 04.11.080

AS 04.11.400

Authority: AS 04.11 (all license types affected) 3 AAC 304.305(f)

AS 04,06,100

~~3 AAC 304.305. Restaurant or Eating Place License~~

~~3 AAC 304.305(f) is repealed because it was relocated to new 3 AAC 304.225.~~

3 AAC 304.305(f) is repealed.

(f) Repealed 12/16/2016. (Eff. 11/29/81, Register 80; am 6/25/88, Register 106; am 5/1/94, Register 130; am 5/11/96, Register 138; am 9/11/98, Register 147; am 12/16/2016, Register 220)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.100

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: November 15, 2016

File No.: JU2016200420

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Regulations re: alternating licensed
premises (3 AAC 304.225; 3 AAC
304.305(f))

We have reviewed the attached regulations from the Alcoholic Beverage Control Board against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated November 14, 2016 from the regulations attorney. The regulations update procedures and requirements for certain license types to alternate as licensed or unlicensed premises; the regulations also consolidate those provisions in a single section, address license types more recently established under statute, and make a technical conforming repeal.

We find no legal problems with the regulations. Though the attached affidavit of agency record refers to the Alcohol and Marijuana Control Office keeping the record of use or rejection of public comments, that office serves as support staff to the Alcoholic Beverage Control Board: the agency that considers public comments and formally keeps the record of public comments. The certification order indicates that the board considered public comments for this project. The informal reference in the affidavit to the board's support staff is not a substantive violation of the Administrative Procedure Act. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The May 17, 2016 public notice and the October 27, 2016 certification order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016200420

November 15, 2016
Page 2

We have made some technical corrections to the regulations in accordance with AS 44.62.125, as shown on the attached copy.

SCW

cc w/enc: (via email)

Cynthia Franklin, Executive Director
Alcoholic Beverage Control Board and Marijuana Control Board

Micaela Fowler, Regulations Contact
Department of Commerce, Community, and Economic Development

Sarah Oates
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Harriet Dinegar Milks, Assistant Attorney General
Commercial and Fair Business Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: November 14, 2016

FILE NO.: JU2016200420

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
& Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Alcoholic Beverage Control
Board regulations re: alternating
licensed premises (3 AAC
304.225; 3 AAC 304.305(f))

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General &
Assistant Regulations Attorney
Legislation/Regulations Section—Juneau

AFFIDAVIT OF BOARD ACTION

I, Cynthia Franklin, Director for the Alcoholic Beverage Control Board, being duly sworn, state the following:

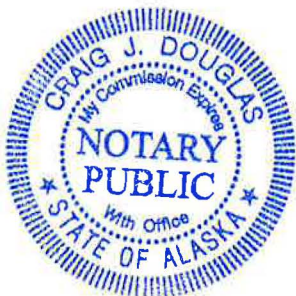
The attached motion, reflected in the attached board minutes of the Alcoholic Beverage Control Board dealing with Alternating Licensed Premises requirements in 3 AAC 304.225 was passed by the Alcoholic Beverage Control Board during its July 20, 2016 regular meeting.

Date: September 21, 2016



Cynthia Franklin, Director

Subscribed and sworn to before me at Anchorage, Alaska on September 21, 2016.





Notary Public in and for the State of Alaska



Alcoholic Beverage Control Board

Meeting Minutes

July 20, 2016

Fourth Judicial District

Department of Environmental Conservation Building

610 University Drive, Conference Room B & C

Fairbanks, Alaska

***Meeting minutes are 37 minutes fast (actual start time is 9:15am)**

Board Members Present:

Bob Klein, Chair, Industry Member

Ellen Ganley, Vice Chair, Public Member

Marvin Yoder, Public Member

Bobby Evans, Rural Member (telephonic)

Thomas Manning, Industry Member

Staff Members Present:

Cynthia Franklin, Director

Sarah Oates, Program Coordinator

Legal Counsel Present:

Harriet Milks, Assistant Attorney General (telephonic)

Call to Order

9:52:46 AM

● **DIRECTOR BRIEFING**

A. Director's Report

9:53:54 AM

TAB 1

Bob Klein thanks the Administration for waiving the travel restriction for this board meeting.

10:00:37 AM

Cynthia Franklin specifically thanks Commissioner Hladick for acknowledging the importance of meeting in-person and supporting the travel for this meeting.

Bob Klein thanks John Calder for his work.

Marvin Yoder motions to adopt the regulation with the amendment that 3 AAC 304.980(b)(1) to replace *"the licensee, a majority shareholder of a corporate licensee, or a majority member of a LLC licensee"* with *"a licensee whose name is required to be provided with an application for a new license under AS 04.11.260"*.

Ellen Ganley seconds the motion.

Motion carries unanimously.

Tom Manning motions to open a regulation project to clarify [4:22:59 PM](#)
some of the parameters around AS 04.11.400(d) tourism licenses.

Ellen Ganley seconds the motion.

Motion carries unanimously.

E. Alternating Premises

[4:25:28 PM](#)

1. Draft

TAB 50

2. Public Comments Received

TAB 51

The board discusses public comments received and discusses the draft language.

Ellen Ganley motions to adopt the regulation.

Tom Manning seconds the motion.

Motion carries unanimously.

F. Restaurant Designation Permit

[4:35:41 PM](#)

1. Draft (no public comments received)

TAB 52

Cynthia Franklin informs the board that no public comments were received.

Marvin Yoder motions to adopt the regulation.

Tom Manning seconds the motion.

Motion carries unanimously.

● **NOTICES OF VIOLATION**

[4:37:46 PM](#)

A. Notices of Violation Issued and Licensee Responses

TAB 53

No Action

● **NEXT ABC BOARD MEETING**

[4:38:11 PM](#)

Wednesday, October 26, 2016 in Nome.

● **ADJOURN**

[4:41:06 PM](#)

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Cynthia A. Franklin, Director of the Alcohol and Marijuana Control Office, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 304.225 has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

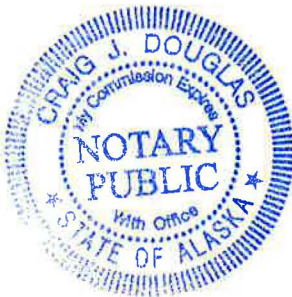
Date: _____

9/21/16



Cynthia A. Franklin, Director

Subscribed and sworn to before me at Anchorage, Alaska on 9.21.16.





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Cynthia A. Franklin, Director for the Alcohol and Marijuana Control Office, being duly sworn, state the following:

In compliance with AS 44.62.215, the Alcohol and Marijuana Control Office has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Alcohol and Marijuana Control Office regulation on Alternating Licensed Premises requirements.

Date: October 27, 2016



Cynthia A. Franklin, Director

Subscribed and sworn to before me at Anchorage, Alaska on October 27, 2016



Notary Public in and for the State of Alaska



NOTICE OF PROPOSED REGULATIONS
REGARDING ALTERNATING LICENSED PREMISES FOR CERTAIN LICENSE TYPES
ALCOHOLIC BEVERAGE CONTROL BOARD

The Alcoholic Beverage Control Board proposes to adopt regulations to amend 3 AAC 304.225. These proposed regulations relate to alternating licensed premises for certain license types

The Alcoholic Beverage Control Board proposes to adopt regulations in Title 3 of the Alaska Administrative Code, dealing with alternating licensed premises for certain license types.

3 AAC 304.225— Alternating licensed premises for certain license types regulations are proposed as follows:

Rules allowing Restaurant Eating Place Licenses, Golf Course License, Common Carrier License, Recreational Site License, Outdoor Recreational Lodge License, Destination Resort License, Beverage Dispensary Tourism License or Restaurant Eating Place Tourism License to alternate portions of the premises as licensed or unlicensed premises and rules regarding conditional requirements for licensees seeking to alternate portions of the premises as licensed or unlicensed premises.

You may comment on the proposed regulations, including the potential costs to private persons of complying with the proposed regulations, by submitting written comments to John Calder, Alcoholic Beverage Control Board at 550 W. 7th Ave, Suite 1600, Anchorage, AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by electronic mail at john.calder@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. Please indicate the article and section number to which each comment refers, if applicable. **Please indicate in the subject line that you are commenting on "Alternating Licensed Premises".** The comments must be received no later than 4:30 p.m. on June 18, 2016.

You may submit written questions relevant to the proposed regulations to John Calder by email and physical address. Please do not submit questions through the Alaska Online Public Notice System. The questions must be received at least 10 days before the end of the public comment period, by June 8, 2016 at 4:30 p.m. The Alcoholic Beverage Control Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alcoholic Beverage Control Board website. The Alcoholic Beverage Control Board may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact John Calder at (907) 269-0350 no later than June 8, 2016 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulations is available through the electronic link to the complete text on the Alaska Online Public Notice System, on the Alcohol & Marijuana Control Office website at <https://www.commerce.alaska.gov/web/amco/> and by contacting John Calder at 550 W. 7th Ste. 1600, Anchorage, AK 99501.


After the public comment period ends, the Alcoholic Beverage Control Board will either adopt the proposed regulations or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

Statutory Authority: AS 04.06.100, AS 04.06.090, AS 04.11.100, AS 04.11.115, AS 04.11.180, AS 04.11.210, AS 04.11.225, AS 04.11.255, AS 04.11.400

Statutes Being Implemented, Interpreted, or Made Specific: AS 04.11.100, AS 04.11.115, AS 04.11.180, AS 04.11.210, AS 04.11.225, AS 04.11.255, AS 04.11.400

Fiscal Information: The proposed regulations are not expected to require an increased appropriation.

DATE: May 16, 2016



Cynthia A. Franklin, Director
Alcoholic Beverage Control Board

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alcoholic Beverage Control Board
2. General subject of regulation: Alternating Licensed Premises
3. Citation of regulation (may be grouped): 3 AAC 304.225
4. Department of Law file number, if any: JU2016200420
5. Reason for the proposed action:
☐ Compliance with federal law or action (identify): _____
☐ Compliance with new or changed state statute
☐ Compliance with Federal or state court decision (identify) _____
☒ Development of program standards
☐ Other (identify): _____
6. Appropriation/Allocation: _____
7. Estimated annual costs in the aggregate to comply with the proposed action to:
Private Persons: \$0
Other State Agencies: \$0
Municipalities: \$0
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>16</u>	Subsequent Years
Operating Cost	<u>\$ 0</u>	<u>\$ 0</u>
Capital Cost	<u>\$ 0</u>	<u>\$ 0</u>
1002 Federal receipts	<u>\$ 0</u>	<u>\$ 0</u>
1003 General fund match	<u>\$ 0</u>	<u>\$ 0</u>
1004 General fund	<u>\$ 0</u>	<u>\$ 0</u>
1005 General fund/ program	<u>\$ 0</u>	<u>\$ 0</u>
1037 General fund/ mental health	<u>\$ 0</u>	<u>\$ 0</u>
Other	<u>\$ 0</u>	<u>\$ 0</u>

9. The name of the contact person for the regulations:
Name: Cynthia A. Franklin
Title: Director, Marijuana Control Board


Address: 550 W. 7th Avenue, Suite 1600
Anchorage, AK 99501

Telephone: (907)269-0350
E-mail address Cynthia.franklin@alaska.gov

10. The origin of the proposed action:
- ☒ Staff of state agency
 - ☐ Federal government
 - ☐ General public
 - ☐ Petition for regulation change
 - ☐ Other (identify) _____

11. Date: 05/16/2016

Prepared by: _____


[signature]

Name (printed): Cynthia A. Franklin

Title (printed): Director, Marijuana Control Board

Telephone: (907)269-0350

270221
0001386308
\$428.30

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Kayla Lavea
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

May 17, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed

Kayla Lavea

Subscribed and sworn to before me
this 17th day of May, 2016

Britney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019
Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED REGULATIONS REGARDING ALTERNATING LICENSED PREMISES FOR CERTAIN LICENSE TYPES ALCOHOLIC BEVERAGE CONTROL BOARD

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04.11.225, AS 04.11.255, AS 04.11.400

Fiscal Information: The proposed regulations are not expected to
require an increased appropriation.

DATE: May 16, 2016

Cynthia A. Franklin, Director
Alcoholic Beverage Control Board