

Kevin Meyer
Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Linda Mattson
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: January 23, 2019

RE: Filed Permanent Regulations: Alcoholic Beverage Control Board

Alcoholic Beverage Control Board regulations re: bona fide restaurants or eating places
(3 AAC 304.910)

Attorney General File:	JU2017200479 (part 1)
Regulation Filed:	1/22/2019
Effective Date:	2/21/2019
Print:	229, April 2019

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

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

The attached single page of regulations, dealing with bona fide restaurant definitions, is certified to be a correct copy of the regulation changes that the Alcoholic Beverage Control Board adopted at its October 15, 2018, meeting, under the authority of AS 04.06.100 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.

Although no public comments were received, 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:

10/31/18

Erika McConnell

Erika McConnell, Director

FILING CERTIFICATION

Kevin Meyer
I, ~~Valerie Nunn-arauluk Davidson~~, Lieutenant Governor for the State of Alaska, certify that on

January 22, 20 19 at 10:38 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer
Lieutenant Governor

Effective:

February 21, 2019.

Register:

229, April 2019.

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

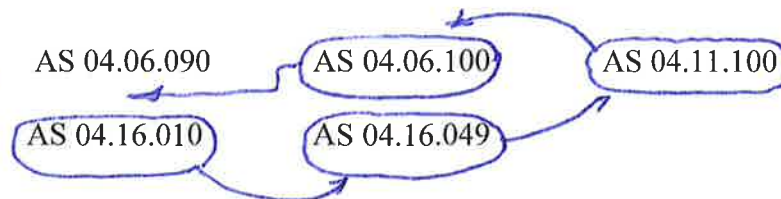
3 AAC 304.910. Restaurant definition. ^a The board ^{will} ~~shall~~ use the following guidelines when determining what qualifies as bona fide restaurant or eating place:

- (1) the applicant demonstrates minimum standards for a kitchen to prepare food onsite, in accordance with 18 AAC 31.040(c) or municipal ordinance;
- (2) the applicant ^{provides} ~~shall provide~~ a menu of food items, including entrees, that are regularly sold and prepared by the licensee on the licensed premises;
- (3) the establishment has tables or counters for consuming food in a dining area on the premises; and

(B) ensure that

- (4) the applicant includes a detailed plan ^(A) to prevent access ^{to} of alcohol by minors and ^{is in compliance with AS 04.16.120} introduction or removal of alcoholic beverages. (Eff. 2/21/2019, Register 229)

Authority:
(a) 2019



MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: January 8, 2019

File No.: JU2017200479 (Part 1)

Thru: Susan R. Pollard *JRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Alcoholic Beverage Control Board
regulations re: bona fide restaurants
or eating places (3 AAC 304.910)

The Department of Law has reviewed the attached regulations of the Alcoholic Beverage Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. 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 regulations were adopted by the Alcoholic Beverage Control Board after the close of the public comment period. The regulations establish guidelines to determine whether an establishment qualifies as a bona fide restaurant or eating place for which the board may approve a liquor license.

To facilitate the filing of the regulations that are ready the soonest, the Alcoholic Beverage Control Board has divided this project (Department of Law file number JU2017200479) into multiple parts. Part 1 includes original supporting documents specific to the subject matter of these regulations.

The August 2, 2018 public notice and the October 31, 2018 certification of adoption 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.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc: Honorable Julie Anderson, Commissioner
Department of Commerce, Community, and Economic Development

Erika McConnell, Director
Alcoholic Beverage Control Board
Department of Commerce, Community, and Economic Development

Jedediah Smith
Alcohol and Marijuana Control Office
Department of Commerce, Community, and Economic Development

Harriet Dinegar-Milks, Senior Assistant Attorney General
Commercial, Fair Business, and Child Support Section

NOTICE OF PROPOSED CHANGES REGARDING BONA FIDE
RESTAURANT DEFINITIONS IN THE REGULATIONS OF THE
ALCOHOLIC BEVERAGE CONTROL BOARD

The Alcoholic Beverage Control Board proposes to adopt regulation changes in 3 AAC 304 of the Alaska Administrative Code, dealing with bona fide restaurant definitions.

3 AAC 304.990 is a new section that defines a bona fide restaurant for the purpose of alcohol licensing.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to the Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by electronic mail at amco.regs@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. The comments must be received not later than 4:30 pm on September 7, 2018.

You may submit written questions relevant to the proposed action to the Alcoholic Beverage Control Board by email at amco.regs@alaska.gov or at 550 West 7th Avenue, Suite 1600, Anchorage, AK 99501. The questions must be received at least 10 days before the end of the public comment period. The Alcoholic Beverage Control Board will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jedediah Smith at amco.regs@alaska.gov or (907) 269-0350 not later than August 25, 2018, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting the Alcohol & Marijuana Control Office at (907) 269-0350 or amco.regs@alaska.gov.

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

Statutory authority: AS 04.06.090 AS 04.06.100 AS 04.11.100 AS 04.16.010 AS 04.16.049

Statutes being implemented, interpreted, or made specific: AS 04.11.100 AS 04.16.010 AS

04.16.049

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: July 26, 2018

A handwritten signature in black ink that reads "Erika McConnell". The script is cursive and fluid, with the first name "Erika" and last name "McConnell" clearly distinguishable.

Erika McConnell, director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alcoholic Beverage Control Board
2. General subject of regulation: Definition of a bona fide restaurant
3. Citation of regulation (may be grouped): 3 AAC 304.9xx
4. Department of Law file number, if any: JU2017200479 part II

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): _____
- (x) Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: \$0

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0

Another state agency: \$0

A municipality: \$0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>2018</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>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

9. The name of the contact person for the regulation:

Name: Jedediah Smith
Title: Local Government Specialist
Address: 550 West 7th Ave, Suite 1600 Anchorage, AK 99501
Telephone: (907) 269-0350
E-mail address: amco.regs@alaska.gov

10. The origin of the proposed action:

☐ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☒ Other (identify): Alcoholic Beverage Control Board

11. Date: July 26, 2018

Prepared by: 

Name (printed): Jedediah Smith
Title (printed): Local Government Specialist
Telephone: (907) 269-0350

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Erika McConnell, Director of the Alcoholic Beverage Control Board, being duly sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 304.910 regarding bona fide restaurant definition, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

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 (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 10/31/18

Erika McConnell
Erika McConnell, Director

Subscribed and sworn to before me at Anchorage, Alaska on 10/31/18

(date)



Jane Sawyer
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Erika McConnell, Director of the Alcoholic Beverage Control Board, being duly sworn, state the following:

The Alcoholic Beverage Control Board did not receive any 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 Alcoholic Beverage Control Board regulation on bona fide restaurant definition.

Date: 10/31/18

Erika McConnell

Erika McConnell, Director

Subscribed and sworn to before me at Anchorage, Alaska on
10/31/18
(date)



Jane Sawyer

Notary Public in and for the State of Alaska

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270221

ST OF AK/ALCOHOL AND MARIJUANA
CONTROL BOARD
550 W 7TH AVE #1600
ANCHORAGE AK 99501

Order#

0001425456

Cost

\$283.88

Product

ANC-Anchorage Daily News

Placement

0300

Position

0301

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily 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

August 02, 2018

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

Joleesa Stepetin

Subscribed and sworn to before me
this 2nd day of August, 2018

Britney Thompson

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

MY COMMISSION EXPIRES

2/23/2019

NOTICE OF PROPOSED CHANGES REGARDING BONA FIDE RESTAURANT DEFINITIONS IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

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Statutory authority: AS 04.06.090 AS 04.06.100 AS 04.11.100 AS 04.16.010 AS 04.16.049

Statutes being implemented, interpreted, or made specific: AS 04.11.100 AS 04.16.010 AS 04.16.049

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: July 26, 2018
/s/ Erika McConnell,
Director

Published: August 2, 2018

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

AFFIDAVIT OF ALCOHOLIC BEVERAGE CONTROL BOARD ACTION

I, Erika McConnell, Director of the Alcoholic Beverage Control Board, being duly sworn, state the following:

The attached motion dealing with bona fide restaurant definitions was passed by the Alcoholic Beverage Control Board during its October 15, 2018, meeting.

Date: 10/31/18

Erika McConnell

Erika McConnell, Director

Subscribed and sworn to before me at Anchorage, Alaska on
10/31/18
(date)



Jane Sawyer

Notary Public in and for the State of Alaska



**Alcoholic Beverage Control Board
Excerpt Draft Meeting Minutes
October 15, 2018
Third Judicial District
145 Main Street Loop
Kenai, Alaska**

A. Open Regulations Projects

1. Bona Fide Restaurant

3:16pm

TAB 36

Status: Public comment period closed September 7, 2018
Potential Board Actions: Vote to adopt; OR
Substantially amend and put out for public comment

Bobby Evans moves to adopt (the regulations project).

Glenn Brady seconds the motion.

Rex Leath asks for the clarification of "entrees" in paragraph (2) of the regulation

Erika McConnell said the establishments should be serving meals, and not just snacks and beverages, and "entrée" implies a meal.

Glenn Brady referenced 18 AAC AAC 31.040 and asked whether a licensed establishment under this definition meets the Department of Environmental Conservation definition of a food preparation facility.

Bob Klein responds yes, this is an FB-1.

Erika McConnell reads the regulation.

Motion carries, 5-0