

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
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530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Debbie Morgan
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: April 9, 2019

RE: Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board regulations re: conditional protests by local governments (3 AAC 360.060(a), (d))

Attorney General File:	2019200010
Regulation Filed:	4/9/2019
Effective Date:	5/9/2019
Print:	230, July 2019

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

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached two pages of regulations, dealing with local government protests, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its February 21, 2019 meeting, under the authority of AS 17.38.121 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 Marijuana 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: 3/14/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

April 9, 20 19 at 10:42 .m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer

Lieutenant Governor

Effective: May 9, 2019

Register: 230, July 2019

3 AAC 306.060(a) is amended to read:

(a) Not later than 60 days after the director sends notice of an application for a new a new onsite consumption endorsement, renewal of an onsite consumption endorsement, marijuana establishment license, renewal of a marijuana establishment license, license conversion, endorsement, or transfer of a marijuana establishment license to another person, a local government may protest the application by sending the director and the applicant a written protest and the reasons for the protest. The director may not accept a protest received after the 60-day period. **If the protest is a conditional protest, the board will require the applicant to show to the board's satisfaction that the requirements of the local government have been met before the director may issue the license. If the protest is not a conditional protest, [IF A LOCAL GOVERNMENT PROTESTS AN APPLICATION FOR A NEW OR RENEWAL** [A NEW OR RENEWAL ONSITE CONSUMPTION ENDORSEMENT, **LICENSE,** FOR A LICENSE CONVERSION, OR FOR A TRANSFER OF A LICENSE TO ANOTHER PERSON,] the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

3 AAC 306.060(d) is amended to read:

(d) In this section,

(1) "local government" means each local government with jurisdiction over the licensed premises;

(2) **"conditional protest" means a protest by a local government based on** government's requirements that **requirements of the local government which the applicant must meet before licensure, and that the applicant has not yet met but that the local government expects the applicant will be able to meet within a reasonable period of time.** (Eff. 2/21/2016, Register 217; am

Register 230, July 2019

COMMERCE, COMMUNITY, AND EC. DEV.

am 4/11/2019, Register 230;

12/28/2017, Register 224; am 2 / 21 / 2019, Register 227; am 5 / 9 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121


MEMORANDUM

State of Alaska Department of Law


To: The Honorable Kevin Meyer
Lieutenant Governor

Date: April 2, 2019

File No.: 2019200010

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

Tel. No.: 465-3600

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

Re: Marijuana Control Board regulations
re: conditional protests by local
governments (3 AAC 306.060(a), (d))

The Department of Law has reviewed the attached regulations of the Marijuana 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 Marijuana Control Board after the close of the public comment period. The regulations concern conditional protests by local governments of applications for marijuana establishment licenses.

The January 6, 2019 public notice and the March 14, 2019 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.

The regulations include amendments to existing 3 AAC 306.060(d). Existing 3 AAC 306.060(d) is part of regulations changes that took effect February 21, 2019, and that are to appear in print in Register 229 (April 2019) (Department of Law file number 2018200819). Another set of regulations--filed by the Lieutenant Governor's office on March 12, 2019, to appear in print in Register 230 (July 2019), and with an effective date of April 11, 2019 (Department of Law file number JU2017200548)--makes amendments to 3 AAC 306.060, but inadvertently does not display 3 AAC 306.060(d). That project does not explicitly repeal 3 AAC 306.060(d). By contrast, the current regulations project on conditional protests assumes the existence of, and makes amendments to, 3 AAC 306.060(d). The omission of 3 AAC 306.060(d) from display in project number JU2017200548 is a clerical error; 3 AAC 306.060(d) was not repealed in that project. To avoid confusion when the regulations are transmitted for printing, please alert the publisher of the clerical error.

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
Marijuana Control Board
Department of Commerce, Community, and Economic Development

Debbie Morgan, Regulations Contact
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 TO LOCAL GOVERNMENT PROTESTS
IN THE REGULATIONS OF MARIJUANA CONTROL BOARD

The Marijuana Control Board proposes to adopt regulation changes in 3 AAC 306 of the Alaska Administrative Code, dealing with conditional local government protests, including the following:

3 AAC 306.060 is proposed to be changed to include conditional protests by local governments.

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 Marijuana 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 p.m. on February 8, 2019.

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

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact the Alcohol and Marijuana Control Office at amco.regs@alaska.gov or (907) 265-0350 not later than January 28, 2019, 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 and Marijuana Control Office at amco.regs@alaska.gov or (907) 265-0350.

After the public comment period ends, the Marijuana 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 17.38.010; AS 17.38.070; AS 17.38.121; AS 17.37.150; AS 17.38.190; AS 17.38.200; AS 17.38.900

Statutes being implemented, interpreted, or made specific: AS 17.38.200; AS 17.38.210

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

The Alcohol and Marijuana Control Office keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Marijuana Control Board notices of proposed regulation changes. To be added to or removed from the list, send a request to the Alcohol and Marijuana Control Office at 550 West 7th Avenue, Suite 1600, Anchorage, Alaska 99501, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Date: December 31, 2018



Erika McConnell, Director

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: Conditional Protests by Local Governments
3. Citation of regulation (may be grouped): 3 AAC 306.060
4. Department of Law file number, if any: 2019200010

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: None

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

A private person: None

Another state agency: None

A municipality: None

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

	Initial Year FY 2019	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) 334-2195
E-mail address: Jedediah.smith@alaska.gov

10. The origin of the proposed action:

☐ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change⁷
☒ Other (identify): Marijuana Control Board

11. Date: December 31, 2018

Prepared by: 

Name (printed): Jedediah Smith
Title (printed): Local Government Specialist
Telephone: (907) 334-2195

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Erika McConnell, Director of the Marijuana Control Board, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 306.060 regarding local government protests 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).

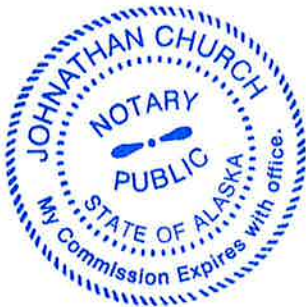
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 3/14/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 3/14/19.
(date)



[Signature]
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

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

In compliance with AS 44.62.215, the Marijuana Control Board 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 Marijuana Control Board regulation on local government protests.

Date: 3/14/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 3/14/19.
(date)



[Signature]
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#
Cost

0001432826
\$373.50

Product ADN-Anchorage Daily News
Placement 0300
Position 0301

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Sarah Jennett

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

January 06, 2019

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

Sarah Jennett

Subscribed and sworn to before me
this 7th day of January, 2019

Britney Thompson

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

MY COMMISSION EXPIRES

Notary Public
BRITNEY L. THOMPSON
State of Alaska

My Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES TO LOCAL GOVERNMENT PROTESTS IN THE REGULATIONS OF MARIJUANA CONTROL BOARD

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A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting the Alcohol and Marijuana Control Office at amco.regs@alaska.gov or (907) 265-0350.

AK

BRIC

Ste. 201, Anchorage, AK 99503
or filed with the court within
four months after the date of
first publication of this notice or
said claims will be forever
barred.
Dated: January 4, 2018.
/s/ Richard J. Strom, attorney for
Personal Representative.
Published: January 6, 13, 20,
2019

AFFIDAVIT OF BOARD ACTION

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

The attached motion dealing with local government protests was passed by the Marijuana Control Board during its February 21, 2019, meeting.

Date: 3/14/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 3/14/19.
(date)



[Signature]
Notary Public in and for the State of Alaska



**Marijuana Control Board
Excerpt Draft Meeting Minutes
February 21, 2019
First Judicial District
Alaska State Library
395 Whittier Street
Juneau, Alaska**

● **Protest by Local Government**

Status: Public comment period closed February 8, 2019
Potential Board Actions: Vote to adopt; OR
Substantially amend and put out for public comment

Erika McConnell summarizes the information in Tab 27, regulations project "Protest by Local Government". She states that the project was only put out for comment for 30 days, but that all local government contacts were specifically contacted for comment.

Loren Jones asks Harriet Milks if Endorsement should be added to the language for this project and if that would be a substantiative change.

Harriet Milks states that conceptually it's not a substantiative change but it would be safer to put it out again, but that she cannot specifically say that it is required to put out again.

Loren Jones motions to amend to add endorsement language and that with those changes, the regulation be adopted.

Brandon Emmett seconds the motion.

4-0, motion on the amendment carries.

Main motion to adopt the regulation passes 4-0