

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV



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 *April Simpson*

DATE: July 22, 2019

RE: Filed Permanent Regulations: Marijuana Control Board

Marijuana Control Board Regulations re: License Denial (3 AAC 306.080)

Attorney General File:	2019200191
Regulation Filed:	7/22/2019
Effective Date:	8/21/2019
Print:	231, October 2019

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

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached three pages of regulations, dealing with the denial of a marijuana license, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its May 1, 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: 5/22/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Josh Applebee for

FILING CERTIFICATION

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

July 22, 2019 at 1:30 pm., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer (for)

Lieutenant Governor

Effective: August 21, 2019.

Register: 231, October 2019

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



A handwritten signature in blue ink, appearing to read "K. Meyer", is written over a horizontal dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306.080 is amended to read:

3 AAC 306.080. Denial of License application. (a) After review of the application, including the applicant's proposed operating plan and all relevant information, the board will deny an application for a new license if the board finds that

(1) the application is not complete as required under the applicable provisions of 3 AAC 306.020 - 3 AAC 306.055, or contains any false statement of material fact;

(2) the license would violate any restriction in 3 AAC 306.010 or 3 AAC 306.015;

(3) the license would violate any restriction applicable to the particular license type authorized under this chapter;

(4) the license is prohibited under this chapter as a result of an ordinance or election conducted under AS 17.38.210, 3 AAC 306.200, or 3 AAC 306.230;

(5) [THE BOARD FINDS THAT] the applicant's actions or the operating plan does not adequately demonstrate that the applicant will comply with applicable provisions of this chapter; [OR]

(6) the license would not be in the best interests of the public; or

(7) a protest by the local governing body is not arbitrary, capricious, and unreasonable.

(b) After review of the application and all relevant information, the board will deny an application for renewal of a marijuana establishment license if the board finds

(1) any cause listed in (a) of this section;

(2) repealed 8/21/2019 [THAT THE LICENSE HAS BEEN REVOKED FOR ANY CAUSE];

(3) that the license has been operated in violation of a condition or restriction the board previously imposed; ^{u.c.} [or]

(4) that the applicant is delinquent in the payment of taxes due in whole or in part from operation of the licensed business;

(5) that a protest by the local governing body is not arbitrary, capricious, and unreasonable; or

(6) that the ^{applicant} licensee has lost right to possession of ^{the applicant's} its licensed premises.

(c) After review of the application and all relevant information, the board will deny an application for transfer of license to another person if the board finds

(1) any cause listed in (a) of this section;

(2) that the transferor has not paid all debts or taxes arising from the operation of the business licensed under this chapter unless the transferor gives security for the payment of the debts or taxes satisfactory to the creditor or taxing authority;

(3) that transfer of the license to another person would result in violation of the provisions of this chapter relating to identity of licensees and financing of licensees; [OR]

(4) that the prospective transferee does not have the qualifications of an original applicant required under this chapter; or

(5) that a protest by the local governing body is not arbitrary, capricious, and unreasonable.

(d) If the board denies an application for a new license, renewal of a license, license conversion, or transfer of a license to another person, the board will, not later than 15 days after

the board meeting at which the application was denied, furnish a written statement of issues to the applicant, explaining the reason for the denial in clear and concise language, and identifying any statute or regulation on which the denial is based. In the notice of denial the board will inform the applicant of the right to an informal conference under 3 AAC 306.085 and to a formal hearing under 3 AAC 306.090.

(e) After review of the application and all relevant information, the board will deny an application for license conversion if the board finds **that**

(1) the application contains any false statement of material fact;

(2) the license would violate any restriction applicable to the particular license type authorized under this chapter;

(3) the license is prohibited under this chapter as a result of an ordinance or election conducted under AS 17.38.210, 3AAC 306.200, or 3 AAC 306.230;

(4) [THE BOARD FINDS THAT] the **applicant's actions or the** application does not adequately demonstrate that the applicant will comply with applicable provisions of this chapter;

(5) **a protest by the local governing body is not arbitrary, capricious, and unreasonable** [THE APPLICATION IS PROTESTED BY THE LOCAL GOVERNMENT]; or

(6) the license conversion would not be in the best interest of the public. (Eff. 2/21/2016, Register 217; am 2/21/19, Register 229; am 8 / 21 / 2019, Register 231)

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

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

From: Samantha J. Weinstein *swj*
Assistant Attorney General
Legislation and Regulations Section

Date: July 10, 2019

File No.: 2019200191

Tel. No.: 465-3600

Re: Marijuana Control Board Regulation
re: 3 AAC 306.080: Marijuana
Control Board: License Denial

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 at its May 1, 2019, meeting, after the close of the public comment period.

The regulations concern the criteria for marijuana license denial, including local government protest and applicant actions. The amendments would add the "applicant's actions" as a reason to deny a license. This appears vague, but applicants retain their due process rights and any decision using this language to deny an application will be subject to the same review as any other board decision. The board feels that it is necessary to deny a license in the event that an applicant creates a danger to the public without violating an existing law.

The March 3, 2019, public notice and the May 22, 2019, 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.

SRP:sjw

cc: Honorable Julie Anderson, Commissioner
Department of Commerce, Community & Economic Development
Erika McConnell, Director, Marijuana Control Board
Department of Commerce, Community & Economic Development
Jedediah Smith, Local Government Specialist
Department of Commerce, Community & Economic Development
Glenn Hoskinson, Junior Special Assistant to Commission
Department of Commerce, Community & Economic Development

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 306.080, regarding denial of license application 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).

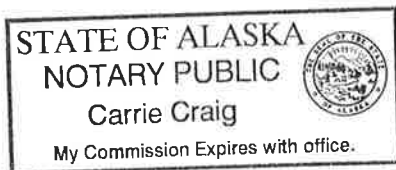
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on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

Date: 5/22/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 5/22/19.



Carrie Craig
Notary Public in and for the State of Alaska

NOTICE OF PROPOSED CHANGES ON LICENSE DENIAL
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 marijuana license denial, including the following:

3 AAC 306.080 is proposed to be amended to include criteria for marijuana license denial, including local government protest and applicant actions

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 Boars 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 April 12, 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 April 2, 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 Office 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 17.38.131; AS 17.38.150; AS 17.38.150; AS 17.38.190; AS 17.38.200; AS 17.38.900

Statutes being implemented, interpreted, or made specific: AS17.38.121; AS 17.38.190; AS 17.38.200

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

The Marijuana Control Board 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 amco.regs@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Date: February 27, 2019



Erika McConnell, Director
Marijuana Control Board

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Marijuana Control Board
2. General subject of regulation: License denial
3. Citation of regulation (may be grouped): 3 AAC 306.080
4. Department of Law file number, if any: 2019200191

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 <u>20</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) 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 change
☒ Other (identify): Marijuana Control Board

11. Date: February 27, 2019 _____ Prepared by: 

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

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

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

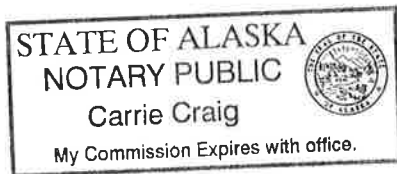
In compliance with AS 44.62.215, the Marijuana Control Board has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Marijuana Control Board regulation on denial of a license application.

Date: 5/22/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 5/22/19.



Carrie Craig
Notary Public in and for the State of Alaska

AFFIDAVIT OF MARIJUANA CONTROL BOARD ACTION

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

The attached motion dealing with the denial of a license application, was passed by the Marijuana Control Board during its May 1, 2019, meeting.

Date: 7/2/19

Erika McConnell

Erika McConnell, Director
Marijuana Control Board

Subscribed and sworn to before me at Anchorage, Alaska, on 7/2/19.



Jane Sawyer

Notary Public in and for the State of Alaska

ANCHORAGE DAILY NEWS

AMCO

AFFIDAVIT OF PUBLICATION

MAR 13 2019

Account #: 270221

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

Order#
Cost

0001435262
\$378.50

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

March 03, 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 4th day of March, 2019

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

MY COMMISSION EXPIRES

STATE OF ALASKA
NOTARY
PUBLIC
Jada L. Nowling

NOTICE OF PROPOSED CHANGES ON LICENSE DENIAL IN THE REGULATIONS OF MARIJUANA CONTROL BOARD

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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.

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Statutory authority: AS 17.38.010; AS 17.38.070; AS 17.38.121; AS 17.38.131; AS 17.38.150; AS 17.38.150; AS 17.38.190; AS 17.38.200; AS 17.38.900

implemented, interpreted, or made

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THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

**Department of Commerce, Community,
and Economic Development**

ALCOHOL & MARIJUANA CONTROL OFFICE
550 West 7th Avenue, Suite 1600
Anchorage, AK 99501
Main: 907.269.0350

Marijuana Control Board

Excerpt Draft Meeting Minutes

May 1, 2019

Third Judicial District

3301 Eagle Street, Room 104 (Midtown Job Center)

Anchorage, Alaska

● **REGULATIONS**

Denial of License Application

Status: Public comment period closed April 12, 2019

Potential Board Actions: Vote to adopt; OR
Substantially amend and put out for public comment

Erika McConnell summarizes Tab 19

Loren Jones moves to adopt project "Denial of License Application"

None opposed, motion carries.