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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

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

FROM: Scott Meriwether
Special Assistant 
907.465.4081

DATE: February 24, 2015

RE: Filed Emergency Regulations: Alcoholic Beverage Control Board
Emergency Regulations re: definition of "in public" (3 AAC 304.990)

Attorney General File:	Emergency Regulations
Regulation Filed:	February 24, 2015
Effective Date:	February 24, 2015
Expiration Date:	June 23, 2015 unless made permanent by the adopting agency
Print:	213, April 2015

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

FINDING OF EMERGENCY

The Alcoholic Beverage Control Board finds that an emergency exists and that the attached regulations are necessary for the immediate preservation of the public peace, health, safety, and general welfare. The facts constituting the emergency include the following:

Effective February 24, 2015 Alaska Statute (AS) 17.38 significantly expands the circumstances in which a citizen may lawfully possess, transport, and transfer marijuana. Alaska Statute 17.38.040 expressly makes it unlawful to “consume marijuana in public.” Alaska Statute 17.38.900 defines “consumption” as “the act of ingesting, inhaling, or otherwise introducing marijuana into the human body.” But AS 17.38 does not define “in public.”

Testimony before the legislature and local governing bodies has revealed widespread concern that persons charged with enforcement of Alaska’s existing drug laws as well as the new marijuana law will lack sufficient guidance as to the meaning of “in public” to effectively enforce the new law, and that confusion and disorder will result, putting the public at risk.

Emergency Regulations


Therefore, this emergency regulation is necessary, to give clear and consistent guidance to persons who may consume marijuana in various venues, as well as those charged with enforcing the new law, so that the public peace, health, safety, and general welfare may be protected.

ORDER CERTIFYING ADOPTION

I certify that the Alcoholic Beverage Control Board, under the authority of AS 17.38.040 and 17.38.090, adopted at its February 24, 2015 meeting the attached one page of regulation changes as emergency regulations to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: February 24, 2015,
at Juneau, Alaska.

By: 
Ethan Billings
Member, Alcoholic Beverage Control Board

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on Feb 24, 2015, at 10:15 A.m., I filed the attached regulation according to the provisions of AS 44.62.


Lieutenant Governor Byron Mallott

Effective: February 24, 2015

Register: 213, April, 2015

Expires June 23, 2015
unless made "permanent"
by the adopting agency.

EMERGENCY REGULATION

Register 213, April 2015 COMMERCE, COMMUNITY, AND EC. DEV.

3 AAC 304.990 is amended by adding a new subsection to read:

(b) In AS 17.38.040, "in public" means in a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(Eff. 4/28/84, Register 90; am 6/13/2003, Register 166; am 2/24/2015, Register 213)

Authority: AS 04.06.090 AS 17.38.040 AS 17.38.090
 AS 04.06.100

Alcoholic Beverage Control Board Meeting
February 24, 2015
Excerpt From Unapproved Minutes

Board Members Present Telephonically:

Bob Klein, Chair
Ellen Ganley, Vice Chair
Ethan Billings, Member
Marvin Yoder, Member
Bobby Evans, Member

Staff Members Present Telephonically:

Cynthia Franklin, Director
Sarah Oates, Records & Licensing Supervisor

ABC Board Counsel Present Telephonically:

Harriet Milks, Assistant Attorney General

Board member Ellen Ganley moves and member Ethan Billings
seconds the motion to adopt the finding of emergency as attached.

7:24:03 AM

The motion carries unanimously.

Board member Bobby Evans moves and member Ethan Billings
seconds the following motion regarding the attached draft regulation:

7:27:26 AM

"I move to adopt 3 AAC 304.990(b) as written in the February 24, 2015
draft regulation."

The motion carries unanimously.

Minutes excerpt reviewed and approved by:


Cynthia A. Franklin, Director



Date:

2/24/15

Sarah D. Oates, Records & Licensing Supervisor



Date:

02/24/15

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF BOARD ACTION

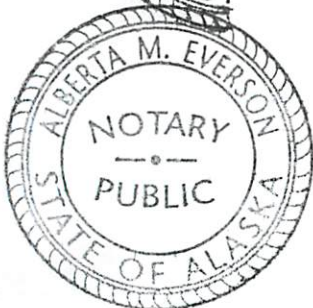
I, Ethan Billings, for the Alcoholic Beverage Control Board, being duly sworn, state the following:

The attached motion, amending 3 AAC 304.990 to add a definition of "in public" applicable to AS 17.38.040, was passed by the Alcoholic Beverage Control Board during its February 24, 2015 meeting.

Date: 2/24/15
Juneau, Alaska

Ethan Billings
Ethan Billings
Member, Alcoholic Beverage Control Board

SUBSCRIBED AND SWORN TO before me this 24 day of February, 2015



Alberta M. Everson
Notary Public in and for the
State of Alaska
My commission expires: With Office



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive
Anchorage, Alaska 99501
Main: 907.269.0350
TDD: 907.465.5438
Fax: 907.334.2285

MEMORANDUM

TO: Scott Meriwether, Special Assistant
Office of the Lieutenant Governor

DATE: March, 2, 2015

FROM: Gil Nelson, Administrative Assistant

A handwritten signature in blue ink, appearing to read "G. Nelson".

RE: Affidavit of Notice of Adoption of Emergency
Regulations re: definition of "in public"
3 AAC 304.990

As required by the *Drafting Manual for Administrative Regulations*, Chapter 3, Steps 7 & 9, I have attached the original affidavit of notice of adoption of emergency regulations, a copy of the public notice, a copy of the additional regulations notice information and a copy of the affidavit of publication for the above referenced emergency regulations. The regulations were adopted by the Alcoholic Beverage Control (ABC) Board on February 24, 2015 with the originals being filed with your office. The ABC Board intends to make these regulations permanent.

If you have any questions, please call.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF ADOPTION
OF EMERGENCY REGULATIONS
AND FURNISHING OF ADDITIONAL INFORMATION

I, Gil Nelson, Administrative Assistant of the Alcoholic Beverage Control Board, being sworn, state the following:

As required by AS 44.62.250, notice of the February 24, 2015 emergency changes to 3 AAC 304.990 adding a new subsection to define the term "in public" that appears in AS 17.38.040. has been distributed under AS 44.62.190(a) 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 regulations;
- (5) electronically transmitted to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Legislative 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 regulations, 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(d), additional regulations notice information regarding the February 24, 2015 emergency changes to the regulations described above has been furnished to interested persons and furnished to those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

DATE: 3-2-15
Anchorage, Alaska

Gil Nelson
Gil Nelson, Administrative Assistant, ABC board

SUBSCRIBED AND SWORN TO before me this 2nd day of March, 2015.



Jane Sawyer
Notary Public in and for the
State of Alaska
My commission expires: w/office

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS:
ALCOHOLIC BEVERAGE CONTROL BOARD

Regarding consumption of marijuana "in public."

BRIEF DESCRIPTION

The Alcoholic Beverage Control Board proposes to make permanent changes to regulations made by emergency regulations in the definitions section, by adding a definition of "in public."

On February 24, 2015, the Alcoholic Beverage Control Board adopted, as emergency regulations, changes in Title 3 of the Alaska Administrative Code dealing with public consumption of marijuana, including the following:

3 AAC 304.990 is proposed for amendment by adding a new subsection to define the term "in public" that appears in AS 17.38.040.

The emergency regulations took effect February 24, 2015, and will expire June 23, 2015. The Alcoholic Beverage Control Board intends to make the emergency regulations permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes, by submitting written comments to Cynthia Franklin at 2400 Viking Drive, Anchorage, AK 99501. Additionally, the Alcoholic Beverage Control Board will accept comments by facsimile at 907-334-2285 or by electronic mail at cynthia.franklin@alaska.gov. The comments must be received no later than 4:00 p.m. on March 31, 2015.

You may submit written questions relevant to the proposed action to Cynthia Franklin by electronic mail at cynthia.franklin@alaska.gov, or by regular mail to Cynthia Franklin, Alcoholic Beverage Control Board, 2400 Viking Drive, Anchorage, Alaska 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 response available on the agency 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.

Oral comments may also be submitted at a hearing to be held on April 9, 2015, at the Anchorage Legislative Information Office, Room 203, 716 W 4th Avenue, Anchorage, Alaska 99501. The oral hearing at which you may offer comments will be held from 9:00 am – 10:00 am. To participate by telephone, call 1-800-315-6338 and enter the code 69173# when prompted. Testimony at this oral hearing might be limited to a reasonable period of time for each person if necessary to accommodate those who wish to speak, and the hearing might be extended if necessary to accommodate those present who wish to speak. Please note that written comments will not be taken at this hearing.

A copy of the regulation proposed to be made permanent is available on the Alaska Online Public Notice System or by contacting Cynthia Franklin at 2400 Viking Drive, Anchorage, AK 99501, phone: 907-269-

0350, or <http://commerce.state.ak.us/dnn/abc/Home.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Gil Nelson at 907-269-0352 no later than March 21, 2015 to ensure that any necessary accommodations can be provided.

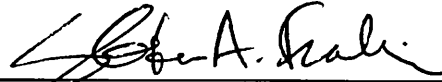
The language of the permanent regulations may be different from that of the original emergency regulations and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected.

Statutory Authority: AS 17.38.090

Statutes Being Implemented, Interpreted, or Made Specific: AS 17.38.090

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

DATE: 2/25/15



Cynthia A. Franklin
Director, Alcoholic Beverage Control Board

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(g))

1. Adopting agency: Department of Commerce, Community, and Economic Development
2. General subject of regulation: public consumption of marijuana
3. Citation of regulation (may be grouped): 3 AAC 304.990
4. Department of Law file number, if any: _____

5. Reason for the proposed action:
 - Compliance with federal law
 - Compliance with new or changed state statute
 - Compliance with court order
 - Development of program standards
 - Other (please list): threats to public safety and general welfare

6. Appropriation/Allocation: NA

7. Estimated annual costs in the aggregate to comply with the proposed action to:
 - Private Persons: None
 - Other State Agencies: None
 - Municipalities: None

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

	Initial Year FY 2015	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>

8. The name of the contact person for the regulations:
 - Name: Cynthia A. Franklin
 - Title: Director
 - Address: 2400 Viking Drive
Anchorage, AK 99501

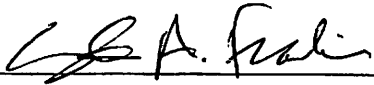
Telephone: 907-269-0350

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: February 24, 2015

Prepared by: 
[signature]

Name (printed): Cynthia A. Franklin

Title (printed): Director, Alcoholic Beverage Control Board

Address: 2400 Viking Drive
Anchorage, AK 99501

Telephone: 907-269-0350

270221
0001359939
\$ 388.46

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

February 26, 2015

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 26th day of February, 2015

Britney Thompson

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

05/18/2015



**NOTICE OF ADOPTION OF EMERGENCY REGULATIONS:
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Statutory Authority: AS 17.38.090

Statutes Being Implemented, Interpreted, or Made Specific:
AS 17.38.090

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

Cynthia A Franklin, Director
(907) 269-0350

Published: February 26, 2015