

Introduced by: Mayor Matherly
Date: February 5, 2018
Amended Substitute Version Introduced by:
Council Members Cleworth & Rogers

ORDINANCE NO. 6070, AS AMENDED

**AN ORDINANCE TO AMEND FAIRBANKS GENERAL CODE CHAPTER 14,
BUSINESSES, BY ADDING ARTICLE VI REGULATING MARIJUANA
ESTABLISHMENTS**

WHEREAS, the Fairbanks City Council is the local regulatory authority for licensing marijuana establishments in the corporate limits of the City of Fairbanks, per state law and City Council Resolution No. 4740; and

WHEREAS, Alaska Statute 17.38.040 and Fairbanks General Code Sec. 46-44 prohibit the public consumption of marijuana; and

WHEREAS, the Alaska Association of Chiefs of Police, the State of Alaska Director of the Division of Public Health, the State of Alaska Director of the Division of Behavioral Health for the Department of Health and Social Services, and the former Commissioner of the Alaska Department of Health and Social Services submitted letters to the Marijuana Control Board opposing onsite consumption of marijuana at marijuana establishments (see attachments); and

WHEREAS, guidelines are needed for the review and approval of applications for marijuana establishment licenses within the city.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. Fairbanks General Code Chapter 14 is hereby amended by adding a new Article VI. Marijuana Establishments as follows:

CHAPTER 14. BUSINESSES

ARTICLE VI. MARIJUANA ESTABLISHMENTS

Sec. 14-211. Local Control.

The city council may exercise local control of marijuana establishments to the fullest extent allowed by state law.

Sec. 14-212. Number of licenses authorized.

(a) The number of marijuana establishment licenses authorized within the city limits is the number authorized by state law or as set forth below:

- (1) Retail marijuana store: ~~45~~ **25** allowed within the city limits. ~~This limit will decrease through attrition whenever a retail license is not renewed until the state alcohol license standard of one per 3,000 in net population is reached.~~
- (2) Marijuana cultivation facility: **as authorized by state law** ~~limit is set according to the state alcohol license standard of one per 3,000 in net population.~~
- (3) Marijuana testing facility: as authorized by state law.
- (4) Marijuana product manufacturing facility: as authorized by state law.

Sec. 14-213. Restrictions on marijuana establishments.

(a) No onsite consumption of marijuana at any marijuana establishment is allowed in the city, even if authorized by state law.

(b) No marijuana cultivation facility may be located within 750 feet of areas zoned as Multiple Family (MF), Multiple Family Residential/Professional Office District (MFO), Two-Family Residential (TF), and all Single-Family (SF) zoned areas.

(c) No retail marijuana store may be located within 750 feet of a school or within 750 feet of a drug or alcohol rehabilitation facility. As used in this section, "school" means a building whose primary use is for instruction, on a daily basis, of students grades K through 12, and "drug or alcohol rehabilitation facility" means a building whose primary use is for treatment of persons seeking rehabilitation and recovery from drug or alcohol abuse or addiction.

(d) Any distance requirement in this section shall be measured as follows:

- (1) For subsection (b), the distance shall be measured by using a straight line from the closest point of the primary structure of the referenced marijuana establishment to the nearest border of the zone.
- (2) For subsection (c), the distance shall be measured by using a straight line from the closest points of the primary structure of the referenced marijuana establishment and the primary structure of the school or rehabilitation facility.

(e) The restrictions in subsections (b), (c) and (d) above do not apply to marijuana establishments approved by the state Alcohol and Marijuana Control Office (AMCO) or previously considered by the City Council and pending before AMCO prior to the effective date of this ordinance.

Sec. 14-214. Procedure for review of licenses.

(a) Upon receipt of notice from AMCO that it is considering an application for a transfer, renewal, or new marijuana establishment license of any type, the city clerk will direct the fire and police chiefs, the building official, and the chief financial officer to make appropriate investigations within their respective areas of responsibility and to forward written statements to the clerk's office of any reasons why the city should object to the approval of the application.

(b) The city clerk will report to the city council any objections to approval of an application which have been submitted.

(c) For all new marijuana establishment licenses and license transfers referred to the city by AMCO:

- (1) The city clerk will duly advertise in a newspaper of general circulation in the Fairbanks area the date, time, and place where the city council will consider the proposed application and in addition, for all new marijuana establishment licenses, will send copies of such advertisement by mail to all owners of record of land within 1,000 feet of where the marijuana establishment will be located under the proposed new license; and
- (2) On the date and time set for consideration of the proposed application, the city council will hear all interested citizens who may wish to express their opinions on the application.

(d) The city council will determine by motion whether or not to object to the approval by AMCO of the application for the transfer, renewal, or new marijuana establishment license. The city council will consider any written objection, protest, suggested condition, petition, and any testimony received at the public hearing when it considers the application. If the city council objects to approval of the application, the city clerk will prepare and lodge an appropriate protest with AMCO within 60 days of receipt of the proposed application.

Sec. 14-215. City council review of license issuance, renewal, or transfer.

(a) Upon receipt of notification from AMCO that it has before it an application for the issuance, renewal, or transfer of a marijuana establishment license, the city council will determine whether to protest approval of the application. The city council may protest the issuance, transfer, or renewal of a license if it determines any of the following conditions exist:

- (1) Noncompliance with any of the restrictions set forth in Sec. 14-213.
- (2) The business operated under the license is, on the date the city council considers the application, delinquent in the

payment of any sales tax or penalty or interest on such taxes arising out of the operation of the licensed premises.

- (3) There are delinquent property taxes or local improvement district assessments or penalty or interest arising out of real or personal property owned in whole or in part by any person named in the application as an applicant where such property is used, or is to be used, in whole or in part, in the business conducted or to be conducted under the licenses.
- (4) There is a delinquent charge or assessment owing the city by licensee for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided or conducted by the city at the request of or arising out of an activity of the business conducted under the license.
- (5) The business to be operated under the license would violate the zoning code of the borough.

(b) The city council will also consider the following factors in determining whether to protest the approval of the application:

- (1) The character of the surrounding neighborhood and whether the issuance of the license would adversely impact the health, welfare, or public safety of the neighborhood in which the marijuana establishment is proposed to be located, or otherwise would not be in the best interest of the public.
- (2) Law enforcement problems, including the proximity of the premises to law enforcement stations and patrols.
- (3) The concentration of other marijuana licenses in the same vicinity.
- (4) Whether the surrounding area experiences a high rate of crime.
- (5) The adequacy of parking facilities.
- (6) The safety of ingress to and egress from the premises.
- (7) Compliance with state and local fire, building, and health and safety codes.
- (8) The degree of control the licensee has or proposes to have over the conduct of the licensed business.

- (9) The history of convictions of the applicants and affiliates of the applicants for:
 - a. Any felony involving moral turpitude;
 - b. Any violation of AS 11.71 (Controlled Substances) or AS 17.38 (Regulation of Marijuana); and
 - c. Any violation of the marijuana laws of another state as a licensee of that state.
- (10) Whether the applicant or the applicant's affiliates are untrustworthy, unfit to conduct a licensed business, or constitute a source of harm to the public.
- (11) Any other factor the city council determines is relevant to a particular application.
- (12) Together with the renewal application, the city clerk shall provide to the city council for its review all complaints on each licensee which have been filed with the City of Fairbanks, the Fairbanks North Star Borough, or AMCO.**

Sec. 14-216. Access for enforcement; penalties.

(a) All marijuana establishments must provide the Chief of Police with their current hours of operation.

(b) Owners of marijuana establishments, their employees, and all patrons in such establishments must permit and aid the entry of any law enforcement officer during all hours of operation and at any other time when there are two or more persons in the licensed establishment.

(c) Any person who violates or fails to comply with the provisions of subsection (b) of this section will be guilty of a misdemeanor and upon conviction will be fined as provided in FGC Sec. 1-15.

(d) Lack of knowledge, lack of intent, or absence from the premises is not a defense to any criminal action brought under this section against any employee in charge of a marijuana establishment.

Sec. 14-217. State law incorporated.

(a) The city hereby incorporates by reference Alaska Statute 17.38 inclusive as if set forth fully in this chapter.

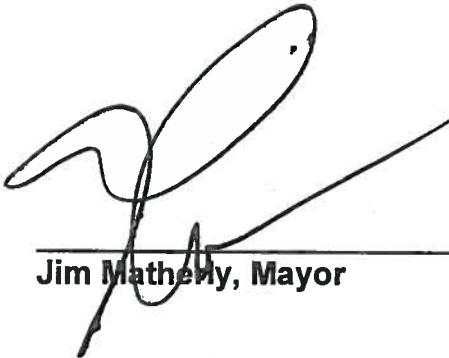
(b) If a conflict should arise or exist between the provisions of AS 17.38 and this Article, the requirements of this Article will take precedence and will be deemed the applicable law within the City of Fairbanks.

Sec. 14-218. City of Fairbanks Building Department Review.

(a) All cultivation and product manufacturing facilities shall install a carbon air filter system or equivalent. The system design will be approved by the Fairbanks Building Department in accordance with an amendment to the 2015 International Mechanical Code, once proposed and approved by the Building Code Review and Appeals Commission. The plans for the carbon air filter system or equivalent shall be included with the license application package that goes before the city council.

(b) If a marijuana retail facility receives complaints of odors from neighbors, adjacent properties, or passersby, the Building Department shall investigate the complaint.

Section 2. That the effective date of this Ordinance is the 12th day of May 2018.

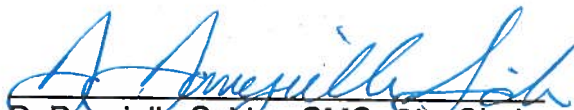


Jim Mathewy, Mayor

AYES: Rogers, Bagwill, Therrien, Pruhs, Cleworth, Huntington
NAYS: None
ABSENT: None
ADOPTED: May 7, 2018

ATTEST:

APPROVED AS TO FORM:



D. Danyielle Snider, CMC, City Clerk



Paul Ewers, City Attorney



Alaska Association of Chiefs of Police

On-site Consumption

September 28, 2017

Honorable Board Members;

This letter is issued with the support and approval of the AACOP Board of Directors.

It is the mission of the Alaska Association of Chiefs of Police (AACOP) to support law enforcement agencies around the state and to advocate for the safety of all persons, including first responders. It has been brought to our attention that the Marijuana Control Board is accepting public input on whether onsite consumption, smoking and vaping of marijuana, should be allowed on licensed premises. Alaska is currently the only state considering this option and as such it should be carefully considered by all parties. We oppose this proposition based on a variety of applicable standards.

On a substantive level and using tobacco smoking as a parallel; nearly all localities in the State have enacted codes that prohibit smoking in restaurants, bars and other public places. This is based largely on the health impacts of second-hand smoke but also on social platforms to enhance accessibility of public to all persons without the fear of health hazards. To allow on-site consumption of marijuana is counter-intuitive. Smoking is banned in nearly all public areas. This should apply to both tobacco and marijuana. In the same vein, the Marijuana Control Board has rejected the proposal for marijuana smoking clubs. In many ways, the 'on-site smoking rooms' proposal is a repackaging of the same concept. It should be recognized as such.

In terms of health risks: any 'second-hand smoke' poses a health risk to people other than the primary consumer. Due to the lack of extended research, many of the risks of marijuana smoke are unknown. What is known is that exposure to 'second-hand marijuana smoke' includes both tar and byproducts of combustion, but also to the psychoactive properties of marijuana.

As public policy, it is contrary to customary care standards for the State to sanction a known hazardous practice that exposes first responders to the inhalation of a substance that currently has unknown second-hand smoke health implications. National Institute on Drug Abuse (NIH) has shown that THC was present in the blood of non-smokers who have spent time in a "well-ventilated space with people casually smoking marijuana." First responders will inevitably be required to respond to these locations to handle unruly patrons, incapacitated patrons, and or health emergencies and these "smoke rooms" pose an unacceptable risk of exposure.

These establishments would be open to the public. And like any other location, police, fire and medics may likely respond to these locations for any number of emergent issues. AACOP opposes on-site consumption in any public locations on the grounds that second hand marijuana smoke is hazardous to the health of anyone who comes in contact with it – including first responders.



Alaska Association of Chiefs of Police

On-site Consumption

September 28, 2017

In terms of regulation, both marijuana and alcohol have intoxicating effects. The mantra of the pro-marijuana lobby is for the similar regulation of marijuana and alcohol. AACOP is in agreement that there should be parallels to regulation. Neither should be consumed by minors; consumed in public; or marketed in areas where minors may be present. In the same manner, public education on the effects of these substances should be a foremost concern in terms of State policy.

However, marijuana and alcohol can't simply be regulated the same. They are different substances that are introduced into the body in different ways. In this regard, AACOP does not oppose the on-site consumption of marijuana edibles. Just as a person is able to consume alcohol in a liquor establishment; people should be able to consume edibles in a marijuana establishment. These behaviors are parallel and have no external effect on others, including first responders.

It is for these reasons that the AACOP Officers and Board of Directors oppose on-site smoking rooms in marijuana establishments.

We are available and interested in participating in dialogue about this issue. The people of Alaska have voted to allow the sale and consumption of recreational marijuana. However, we strongly advocate that the State remain within the confines of the original proposition as presented: personal use in a private setting.

With Sincere Regards,

John J. Papasodora
Chief of Police, Nome Police Department
President
Alaska Association of Chiefs of Police

Mike Holman
Chief of Police, Unalaska Police Department
Vice-President
Alaska Association of Chiefs of Police

Ronda Wallace
Chief of Police, Kodiak Police Department
Secretary
Alaska Association of Chiefs of Police

Josh Dossett
Deputy Chief, Ketchikan Police Department
Treasurer
Alaska Association of Chiefs of Police



Alaska Association of Chiefs of Police

On-site Consumption

September 28, 2017

Brad Johnson
Deputy Chief, Fairbanks Police Department
Past President
Alaska Association of Chiefs of Police

Thomas Clemons
Chief of Police, Seward Police Department
Vice-Chair
State Association of Chiefs of Police
(SACOP)

Ed Mercer
Chief of Police, Juneau Police Department
Board Member
Alaska Association of Chiefs of Police

Steve Dutra
Chief of Police, North Pole Police Department
Board Member
Alaska Association of Chiefs of Police

Board Member
Captain, C Detachment Commander
Alaska Association of Chiefs of Police



THE STATE
of ALASKA

GOVERNOR BILL WALKER

Department of
Health and Social Services

DIVISION OF PUBLIC HEALTH
Director's Office

3601 C Street, Suite 756
Anchorage, Alaska 99503-5924
Main: 907.269-8126
Fax: 907.269-2048

October 23, 2017

Erika McConnell, Director
Alcohol and Marijuana Control Office
550 W 7th Ave, Suite 1600
Anchorage, AK 99501

Dear Ms. McConnell:

On behalf of the Alaska Office of Substance Misuse and Addiction Prevention, we respectfully submit comments on proposed regulation 3 AAC 306.370 and 3 AAC 306.990 (b) to allow retail marijuana licensees to apply for an onsite consumption endorsement, and to define "marijuana consumption area", respectively. This proposed regulation raises concern for Alaskans' health and safety; therefore, we oppose the onsite (public) consumption of smoked, vaped, aerosolized, and edible marijuana products on retailer premises because of the potential health harms to users and non-users.

Public consumption of marijuana was intended to remain illegal. The language in Ballot Measure 2, voted on by the public and now enacted in AS 17.38.040, does not allow for public consumption of marijuana and includes a \$100 fine for this activity. Regulations—first adopted by the Board in February 2015 to define the term "public"—support this restriction. Sec 17.38.020 of the initiative stated: "...nothing in this chapter shall permit the consumption of marijuana in public."

Many local communities lack the health powers to enact smokefree laws. The proposed regulations 3 AAC 306.370 (a) (2) (A) states that these regulations would be in effect "unless prohibited by a local ordinance or state law." Currently, approximately half of Alaska's population is covered by a local smoke free workplace law and many of those communities have updated their local ordinances to include marijuana secondhand smoke. However, some boroughs, such as the Matanuska Susitna Borough and the Fairbanks North Star Borough, would be unable to choose to prohibit onsite consumption if they wanted to because they are organized as second class boroughs without health powers.

Marijuana is known to impair reaction time, hand-eye coordination, and perception of time and distance, all of which increase the risk of being involved with motor vehicle crashes.

Marijuana affects people differently. The high from smoking marijuana can often be felt right away. However, the effects of marijuana can take longer to develop and last longer when eating or consuming marijuana. It is known that marijuana can make it unsafe to drive, bike, and do other activities, and the effects of marijuana edibles can last longer than users think. A person may feel safe to drive after a few hours; however, impairment can last much longer.

In a recent report released by the National Academies of Science, Engineering and Medicine, “substantial evidence of the statistical association between cannabis use and increased risk of motor vehicle crashes” was identified as one of the primary conclusions. Our concern with this proposal is that an increase in public consumption of marijuana may lead to increased driving under the influence, a significant public health area of concern.

Exposing others to secondhand smoke (SHS) is a public health hazard. In 2006, the U.S. Surgeon General concluded that there is no safe level of secondhand tobacco smoke. Because marijuana is illegal under federal law, there have been a limited number of studies examining health risks associated with second marijuana smoke exposure. However, peer-reviewed and published studies indicate that exposure to secondhand marijuana smoke may pose health risks for the public, especially due to its similar composition to secondhand tobacco smoke. According to Moir, et al, (*Chem Res Toxicol* 2008;21:494-502): “Secondhand marijuana smoke contains many of the same cancer-causing substances and toxic chemicals as secondhand smoke. Some of the known carcinogens or toxins present in marijuana smoke include: acetaldehyde, ammonia, arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinolone. Moir, et al. also found significant amounts of mercury, cadmium, nickel, lead, and chromium in marijuana smoke. Comparing it to tobacco smoke, there was 20 times the amount of ammonia and 3-5 times more hydrogen cyanide in marijuana smoke.”

Additionally, a recent study published in the Journal of the American Heart Association concluded that “second hand smoke can exert similar adverse cardiovascular effects regardless of whether it is from tobacco or marijuana.” (Wang X, et al; *J Am Heart Assoc* 2016; DOI:10.1161/JAHA.116.003858)

No type of ventilation system will protect the public from the effects of secondhand smoke, vapor or aerosol. The proposed regulations contain a requirement for separate ventilation systems, separated by a “secure door”. Filtering the air or using ventilation systems will not completely protect the public’s health from marijuana smoke. This is supported by the 2006 U.S. Surgeon General report entitled “The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General.” The report stated that the scientific evidence now supports the following major conclusion:

“Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.”

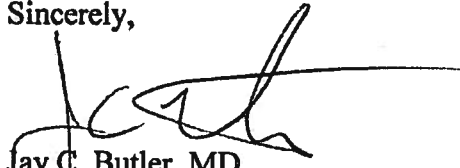
October 23, 2017

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Furthermore, American Society for Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), the standard setting body for the ventilation industry, affirms that mechanical solutions like ventilation cannot control for the health hazards of secondhand smoke, and it recently amended its ventilation standard in 2016 for acceptable indoor air quality to address marijuana. The proposed ventilation requirements in the regulations would cause businesses to invest money in structural changes, and yet not eliminate the health risks of exposure to marijuana secondhand smoke.

Based on these concerns for the health and safety of Alaskans, we recommend the Board not allow smoked, vaped, aerosolized, or edible marijuana consumption in public. Thank you for your time and consideration in supporting the health and safety of all Alaskans.

Sincerely,



Jay C. Butler, MD
Chief Medical Officer, and
Director of the Division of Public Health



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

DIVISION OF BEHAVIORAL HEALTH
Anchorage Regional Office

3601 C Street, Suite 878
Anchorage, Alaska 99503-5924
Main: 907.269.3600
Toll Free: 800.770.3930
Fax: 907.269.3623

October 24, 2017

Erika McConnell, Director
Alcohol & Marijuana Control Office
550 W. 7th Avenue, Suite 1600
Anchorage, AK 99501

Dear Ms. McConnell,

On behalf of the Division of Behavioral Health, I respectfully submit the following comments and recommendations on proposed regulations 3 AAC 306.370 and 3 AAC 306.990 9 (b) to allow retail marijuana licensees to apply for an onsite consumption endorsement, and to define "marijuana consumption area", respectively.

We request the Board strike all allowance for smoked, vaporized or aerosolized marijuana consumption in any indoor spaces. Further, regulations should not allow for any reference to HVAC engineer sign off.

Exposure to second hand smoke is a serious health hazard. It is of concern marijuana is most commonly smoked and marijuana smoke is hazardous to lung health. Marijuana smoke contains many of the same carcinogens and toxins as tobacco smoke (Moir, et al, 2008; Wang, et al, 2016). Additionally, there is evidence that smoking marijuana causes chronic bronchitis and contributes to other health problems. Let it be known to the Board that smoking in indoor places poses a serious health risk for workers, customers and all others in the building. The American Society for Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) has concluded that cleaning air, ventilation and separating smokers from nonsmokers does not eliminate health hazards of second hand smoke for either nicotine or marijuana products.

Smoking is a serious health issue for people with behavioral health disorders. The Division recognizes that approximately 50% of people with mental illness and addictions smoke, compared to 23% of the general population. Further, smoking-related illnesses cause half of all deaths among people with behavioral health disorders. The Division is particularly

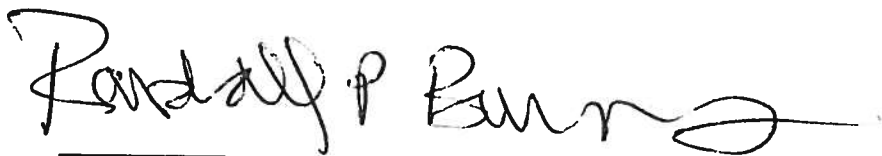
concerned about the disproportionate number of our behavioral health consumers that shall be impacted by allowing indoor smoke in marijuana facilities.

Alaskans are invested in increasing the percentage of nonsmoking adults and youth. The Division endorses the Healthy Alaskans 2020 goals to increase the percentage of adults and youth who currently do not smoke cigarettes. Whether they are nicotine or marijuana, all combustible products pose health hazards to those exposed. Allowing indoor smoking in any form will jeopardize these goals but more importantly the health and safety of all those exposed.

There is concern for the risk to public safety. It is known that marijuana impairs reaction time, hand-eye coordination and perception of time and distance, all of which can increase the risk of being involved with motor vehicle crashes, (National Academies of Sciences, Engineering and Medicine, 2017). The Division is concerned an increase in consumption in marijuana retail outlets could increase driving under the influence of marijuana.

Ballot measure 2 when passed, intended to prohibit public consumption of marijuana. Public consumption as proposed by the board shall have unacceptable and unavoidable negative impacts on the public. The Division strongly opposes the allowance of public consumption as described above. Thank you for your consideration in supporting policies that protect the health and safety of all Alaskans.

Sincerely,

A handwritten signature in black ink that reads "Randal P Burns". The signature is written in a cursive style with a long horizontal flourish at the end.

Randal Burns, Director
Division of Behavioral Health
Department of Health and Social Services

Marijuana Control Board

January 13, 2017

My name is Karen Perdue. I reside in Fairbanks Alaska. I have 25 years of experience in State government, including 14 years as a Deputy Commissioner and Commissioner of the Alaska Department of Health and Social Services. I have been involved in the development and adoption of numerous statutes and subsequent regulatory projects. I have served on various State boards that developed regulations including AHFC, the Denali Commission, the Suicide Prevention Council, and the Alaska Mental Health Trust Authority (ex officio).

I am providing comment on draft regulations 3 AAC 306.365 onsite consumption of marijuana at licensed retail stores.

Alaska is not ready to implement onsite consumption

No other state in the United States allows legal onsite consumption or marijuana bars. Actually it is rarely sanctioned anywhere in the world. It may be possible in the future that states will move to limited forms of onsite consumption, but this is likely several years away. Why do we want to be the first?

MCB board members should exercise a position of caution and do no harm when approaching this issue. The MCB should undertake more examination of the issues around onsite consumption and work in concert with other jurisdictions in learning about those issues and developing more detailed statutory and regulatory framework.

The current proposed regulations do not provide anywhere close to the detail needed in a regulatory framework necessary to protect the public health, protect public safety, ensure compliance with existing limits on sales. In fact, amendments to the regulations in round two increased the supply of product that could be purchased or retained at a marijuana bar through a series of transactions.

MCB board members are appointed with various backgrounds and expertise, but each member has the duty and responsibility to look beyond only the commercial interests and ask the question- have we done all we can to balance personal liberties with the protection of public health and safety in implementing this rule? I think the answer to that is a resounding NO.

For instance, how do we know if the training provided to handlers will be able to adequately detect impairment? Is it peer reviewed? Has this training been used widely in other jurisdictions and if so what is the reliability?

How will law enforcement be prepared to deal with impaired driving impacts? There is no quick test. Advocates of marijuana bars say that DUI's go down and there is limited impairment problem with cannabis. Okay, lets look at the data in more detail.

Does the MCB understand what the effects of smoking and second hand smoking mean to patrons, employees, pregnant women, those exposed to second hand smoke whether in the establishment or linked by a common ventilation system. The ventilation standards only require odor to be considered

not toxins and particulates which are present in marijuana smoke. Do we need to go back to the 60's in terms of our policies on exposure to smoking in group settings indoors?

Does it trouble the Board that it may not be possible to purchase adequate liability insurance for marijuana bars?

What is the staffing burden to enforce yet another entire category of licensed activity? Has the board quantified the staffing needed and the added workload to enforce its rules?

The answers to all these questions and more may not change the mind of individual board members, but because we are FIRST and LIKELY THE ONLY JURISDICTION that marijuana bars will be allowed in the near future, shouldn't we discipline ourselves to ask ourselves the tough questions.

Other States have statewide smokefree laws to protect the public from harmful effects

A great percentage of onsite consumption will be by smoking.

Virtually all of the states that have passed decriminalization or legalization of cannabis have legal statewide bans on smoking indoors, except for private residences. Thus places of commerce like restaurants and bars already ban smoking. This would include California, Oregon, Colorado and Washington. Most of these laws would include any kind of smoking including tobacco, ecigarettes and cannabis. It would be useful to the MCB members and the public to inventory how permissive our draft regulations are in light of this fact.

Alaska currently does not have this statewide law although many cities and boroughs do have such ordinances. If the MCB board does authorize onsite consumption, the next thing that will happen is that local smokefree laws will be assailed to be weakened.

We have to do this for the tourists is a very poor reason to implement a year round public norm

Jurisdictions that have as much or more tourism as Alaska do not permit onsite consumption. It is not a compelling argument.

Onsite consumption should be a separate licensure category rather than an endorsement for a retail marijuana store and it should be authorized by state statute.

In my experience endorsements have been used by the Department of Revenue for purposes of tracking and collecting revenue. Endorsements do not have the teeth of licenses and I do not believe have been used by the State of Alaska to regulate consumed products for the purposes of public health, public notice, zoning or public safety.

I understand endorsements will now be used to provide some tools in alcohol licensing. However, the very idea of an endorsement is to provide an ancillary activity to the core business line. For instance if a brew pub does not get an endorsement to serve food, they can still operate as their main business- a

brew pub. There will be some marijuana retail licensees that depend greatly on an attached marijuana bar to sell their product. Onsite consumption or dispensing is a licensure category. It would be a grave mistake to append onsite consumption establishments on the to retail license especially since no other jurisdiction in the United States currently allows this.

Endorsement is wholly inadequate for the category of commerce that will likely not be a small revenue source to a retail licensee. It is my understanding that the Board does not have the authority to issue onsite consumption licenses for marijuana bars or cafes. It should therefore not issue endorsements for this activity and wait for guidance on this from the Legislature. What happens if a significant portion or majority of the retail licensee's revenue is derived from the existence of onsite consumption? The board is setting a regulatory framework for decades to come.

Apparently retail stores already have regulatory authority in 3AAC 306.305 (a) (3) to allow onsite consumption in the retail setting—presumably to try samples of products. To expand this authority to a separately doored area implies that patrons are expected to consume over a longer period of time much like a bar.

Some members of the MCB articulated they believe that patrons will use the separately doored onsite consumption area to very briefly sample a product and then leave the premises and that the onsite consumption area will be very small as compared to the retail operation. Since this onsite consumption does not legally exist anywhere in the US, how it would develop is speculative. However, it would be easy to see that onsite consumption may account for a majority of the square footage and the majority or a significant portion of the revenue of a retail operation.

Consider the following which will make patrons want to extend their time similar to a bar or cafe:

- Hours of operation may extend from 8am to 5am
- One gram of flower or bud to any one person in a single transaction, but individuals may share products or serially purchase up to a daily limit of one ounce each(serial purchases would only occur as a product of having a place to sit)
- Food and nonalcoholic beverages may be served-Including a fully operational restaurant license.
- Marketing to tourists who want to make the visit to a marijuana bar or café a destination visit. Retail operations with an attached marijuana bar could easily be located in densely populated tourist areas with little parking making them unattractive for use by locals except as a consumption destination.
- Onsite consumption sites could group up as alcohol sites do to encourage bar hopping.

The regulation of onsite consumption outlined in the regulations is vague and inadequate. It is wholly inadequate as compared to alcohol beverage licensing.

Many cannabis advocates have said marijuana should be regulated similar to alcohol. That is clearly not being done here with these regulations.

There are at least 14 types of licenses to dispense alcohol in Alaska. These license types offer the public a clear understanding of the types of products sold, and the consumption allowed.

For instance to possess a restaurant or eating place alcohol license REPL, the licensee must prove through receipts that no less than 50 percent of the gross receipts are from food sales.

Breweries are allowed to sell to individuals and provide small free samples but have restrictions on seating at a bar (to discourage consumption onsite presumably) and hours 9am- 8pm. Similarly distilleries have the same restrictions.

Title 4 does not allow package liquor stores to have onsite consumption of liquor. So do the rules that the MCB have issued most closely approximate- a brewery or distillery handing out samples(if so why have hours til 5am?) , an REPL, or a package liquor store(dispensing not allowed).

None of that clarity is outlined in the State's draft regulations on onsite consumption of marijuana.

In addition, alcohol laws are evolving through a rewrite of Title 4. This process has not concluded. It will take time for the public to understand these changes and how they impact consumption at the community level. Because there are new pending rules for alcohol it seems important that the MCB take the time to understand these rules and provide that information to the public in a way that puts marijuana laws and rules in context. A cross walk prepared by the expert staff the Board has would be helpful. In my involvement in local government testimony, there is a lot of misunderstanding about alcohol rules and the comparison with marijuana- in relation to onsite consumption.

Some may argue that alcohol regulation should not be taken into account in regulating marijuana but alcohol laws represent more than 60 years of public input and careful consultation with communities and industry.

Once marijuana bars are authorized the board can expect the industry to request more and more venues and methods of consumption distribution endorsements such as special events. What is the framework for those requests.

Sections of the regulations are unenforceable, difficult to enforce or inadequate to protect public health

As stated earlier, we can expect a significant portion of marijuana consumption to be by smoking.

It would be interesting to know what the expected ratio of edibles versus smoking will be based on the experience of other jurisdictions. Washington, Colorado and Oregon all have statewide no smoking laws on the books so if they consider marijuana bars that is an important factor for us to consider.

The draft regulations require the licensee to “maintain a ventilation system that directs air from the onsite consumption area to the outside of the building through a filtration system adequate to reduce odor.”

What does that mean, reduce odor by 10%, by half? so a bystander cannot smell it? It will be very difficult for an investigator or enforcement officer to determine a standard. What is the fine or remedy if ventilation or separation are not maintained?

Of course toxins in the combustible products also pose not only a public nuisance but a substantial health risk to workers in the establishments and to bystanders. Retail shops and marijuana bars or cafes in buildings with common ventilation systems will likely find it very difficult to prevent particulates from getting into the common air system. The only way to prevent secondhand exposure is to contain these establishments in stand-alone buildings with vented systems to the outside.

Many jurisdictions have smoke-free ordinances that regulate smoking in a broad array of public places including bars, restaurants and stores. Some of these ordinances specifically apply to all kinds of smoking, including e cigarettes, tobacco and marijuana. Some do not.

A vast majority of businesses who are not in regulated municipalities have voluntarily gone smoke free. The major focus of this public health initiative has been to “take it outside”. This of course will not be permitted with marijuana smoking since it is not legal to consume marijuana in public. This will likely incent people to smoke indoors-- both marijuana and tobacco, either mixed or separately. The harms from second hand smoke are real and detrimental to public health.

Onsite consumption of smoked products will incent advocates to weaken local municipal nonsmoking ordinances and voluntary efforts by businesses. It will turn back the clock on indoor air efforts.

In summary:

- The MCB Board has the duty to weigh all sides of the onsite consumption issue to ensure that public health and safety are protected as well as commercial interests are advanced. The public’s confidence in the final decision would be enhanced if we could see that the Board adopted consideration of public health and safety concerns and gathered more information in an organized, scientific and professional fashion before making its decision. Shouldn’t the standards of inquiry that we hold ourselves to be high when looking at pioneering efforts that other jurisdictions have not undertaken?
- What is the enforcement burden on the staff to enforce its rules on onsite consumption establishments and how will that be met given budget constraints. What are the sanctions on stores that are found out of compliance?
- The endorsement is inadequate to govern an area of commerce that should be licensed.
- The public needs more clarity to understand how marijuana bars would be regulated, in relation to alcohol. This is fundamental to helping communities understand what community norms to expect. The MCB should ask the staff who are experts in both to prepare an analysis of how onsite consumption of marijuana bars would compare to alcohol licensing categories.

- Since these regulations would be the most permissive consumption regulations in the United States, North America and even perhaps in parts of Europe including the Netherlands, the MCB needs to request an impartial analysis of how jurisdictions who allow these businesses or who are contemplating these businesses are addressing issues of second hand smoke, tobacco smoke, public safety and the combination of retail and consumption sites.
- Due to the constraints of the regulatory process, there has been limited opportunity to understand the thinking of the Board on onsite consumption and no opportunity for exchange of expertise or examination of lessons learned in other jurisdictions. This does not enhance public confidence in the process.
- Given the fact that the initiative did not authorize onsite consumption the matter should be dealt with by statute. The Legislature should pass a law specifically authorizing this activity.
- If onsite consumption of marijuana is a reasonable idea it will stand up to reasonable examination and considered public discourse over a period of time.

End of comments