



Testimony to MCB on Proposed Regulations



October 15, 2015

John Calder
Alcoholic Beverage Control Board
550 W. 7th Ave, Suite 1600
Anchorage, AK 99501

Dear Mr. Calder:

The Campaign to Regulate Marijuana Like Alcohol would like to thank the board and its key support staff. The hard work devoted to crafting workable rules is much appreciated by all those who worked so hard to help pass this historic law.

As we have stated throughout the process, we believe the vast majority of rules proposed so far realize both the spirit and intent of Measure 2. We are troubled, however, by a few provisions that remain unresolved. As this process nears its completion in late November, we strongly urge the board to amend its proposed rules as follows.

1. The MCB should establish a retail marijuana store license class allowing on-site consumption.

Private property owners were granted significant rights under the provisions of Measure 2. When we drafted the language, we explicitly included the ability of owners of private establishments to either prohibit or regulate possession or use of marijuana, subject to the authority of local government and that of the state. This provision now appears in Sec. 17.38.120(d).

It is the responsibility of the Marijuana Control Board (MCB) to regulate private property owners and provide local option guidelines, pursuant to its authority under the measure. Accordingly, the board is well within its scope of authority to not only establish various types of retail establishment licenses, but also allow particular classes of retail establishments that allow patrons to consume on-site. In light

of the purpose of the measure in establishing rights for private property owners, such a license is essential to the MCB's duties.

The proposed rules already anticipate this authority in 3 AAC 306.900(b), which indicates that a business cannot maintain, operate, or lease a premises for the purpose of providing a place for consuming marijuana unless the MCB authorizes it. That provision only makes sense if the board can so authorize. It is worth noting that the board has already adopted the practice of developing different classes of license in its establishment of a cultivation broker license — what in effect is a type of cultivation license — even though Measure 2 does not specify a broker as a distinct type of license in and of itself.

Further, it is not just *permissible* for the board to create this type of license; we think it is *critical* that it do so. For those adults who visit Alaska, they must have a place to go. It doesn't make sense that they can purchase marijuana, but have no location in which it can be consumed apart from a private residence.

Finally, one of the express purposes of Measure 2 is to “[allow] law enforcement to focus on violent and property crimes.” Allowing adults to consume socially inside licensed marijuana businesses will reduce the likelihood that they consume publicly outside on the street, creating an unnecessary burden on local law enforcement.

The limitation on the board's authority does not come from Measure 2, but from the very broad definition of “in public” the Alcoholic Beverage Control Board adopted as an emergency measure in February. That definition is too broad in light of the clear protections established for private property owners. In fact, the definition is so breathtakingly broad that it would seemingly criminalize cannabis consumption at office parties, invite-only events, and weddings.

We ask the board to reconsider that definition, acknowledge the private property ownership rights and those of adult consumers inherent in Measure 2, and create a category of retail shops that has clear authority to allow patrons to consume.

2. Local government “protest” procedure is not supported under Measure 2

Section 3 AAC 306.060(a) of the proposed rules would allow local government to “protest” an application for a new license, a renewal license, or the transfer of a license from one person to another. According to the proposed rule, if a local government protests, the board will deny the application unless it finds that the protest is arbitrary, capricious, and unreasonable.

The campaign supports local control as an important feature of the regulatory system. However, local control mechanisms must flow from the authority granted to local government under Measure 2. No such protest procedure is authorized under the measure.

The proposal of such a mechanism for local authority is very likely due to the fact that regulations related to alcohol contain a similar provision. However, Measure 2, which contains specific authority for local control, does not include anything similar.^[1] The inclusion of this provision would therefore be an unconstitutional amendment of a voter-approved measure and should be removed.

Significantly, the legislature considered similar language in a bill presented during the 2015 session, but the measure did not advance. The board should not attempt to create law that does not currently exist through the rule-making process.

3. Edible marijuana products are inadvertently banned under the proposed rules.

As currently written, the proposed rules state that a retailer may not offer or deliver “a consumable product other than marijuana.” However, the definition of marijuana contained in AS 17.38.900 specifically excludes “the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.” Accordingly, the provision as currently written would inadvertently prohibit *any* product that contains a consumable ingredient that is not marijuana. This provision contained in 3 AAC 306.310(b)(3)(B) should be amended to allow for non-marijuana ingredients that are necessarily included in the marijuana product itself.

4. Public notice requirement should allow an option for notification online.

3 ACC 306.025(b) establishes certain public notice requirements for business license applicants, including posting notice in a local paper or, if unavailable, on radio through paid advertising. Advertisements on broadcast media can be costly and may present a financial burden for small businesses when more cost-effective — and often more effective — ways of reaching the public are available. Increasingly, members of the public have access to the Internet and social media, and it is likely that public notice would be as or more effective online than radio. Accordingly, applicants should be allowed to provide notice online. Perhaps they could be posted on the board’s own site.

5. Product approval process should include standards.

The campaign supports a product approval process but suggests two revisions: 1) The MCB should include a timeframe within which the board must make its decision; and 2) the rules should include parameters specifying what types of criteria would be considered when denying products.

Businesses must invest significant time and resources into researching and developing products, and must pay the board to review the application. It is reasonable for them to expect a timely response. 3 AAC 306.545 should be amended to include a specific timeframe.

In addition, licensees should be given some guidance as to what type of products might be rejected — such as products that are likely to appeal to children. It is only fair to include a reasonable standard to avoid that which has the potential to become an arbitrary process.

Again, we wish to thank the board and staff members for their dedication to making the emerging market a success.

Regards,

Tim Hinterberger
Chairman
Campaign to Regulate Marijuana Like Alcohol

[\[1\]](#) Sec. 17.38.070 establishes the ability for marijuana establishments to operate, subject to certain enumerated limitations imposed by local governments. While subsection (f) states that such businesses are subject to rules adopted by local governments, there are significant limitations to this authority. Sec. 17.38.110 provides several specific means by which local government can exert local control over licensees and the licensing process. These include banning businesses through local

ordinances or voter initiatives, restrictions on the time, place, manner or number of businesses which may operate, local registration requirements, operating schedules and fees, and establishment of a local control board. A blanket “protest” is not permitted under Measure 2.