ANCHORAGE, ALASKA
AO No. 2019–103(S), As Amended

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUBMITTING TO THE QUALIFIED VOTERS OF THE MUNICIPALITY OF ANCHORAGE AT THE REGULAR MUNICIPAL ELECTION APRIL 7, 2020, A BALLOT PROPOSITION ASKING WHETHER TO ALLOW ON-SITE CONSUMPTION OF MARIJUANA BY SMOKING OR INHALATION AT RETAIL MARIJUANA ESTABLISHMENTS WITH A LICENSE ENDORSEMENT FOR SUCH ON-SITE CONSUMPTION; AND, SHOULD THE PROPOSITION BE APPROVED, PROVIDING FOR CONFORMING AMENDMENTS TO ANCHORAGE MUNICIPAL CODE CHAPTERS 10.80, LICENSING AND REGULATION OF MARIJUANA ESTABLISHMENTS, AND 16.65, SECONDHAND SMOKE CONTROL ORDINANCE.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Pursuant to state law and the Anchorage Municipal Charter, a ballot proposition in substantially the same form and substance as appears in Section 2 shall be placed on the ballot and submitted to the qualified voters of the Municipality at the regular municipal election on April 7, 2020.

Section 2. The proposition shall be presented in substantially the following form:

PROPOSITION NO. __

ALLOWING ON-SITE CONSUMPTION OF MARIJUANA BY SMOKING OR INHALATION PER APPLICABLE LAW IN LICENSED RETAIL MARIJUANA STORES WITH AN ENDORSEMENT FOR AN ON-SITE CONSUMPTION AREA.

This proposition would make it legal for licensed [freestanding] retail marijuana stores with a license and special land use permit endorsement approved by the Municipality and the State of Alaska to allow their customers to consume marijuana bud or flower by inhalation or smoking in their marijuana consumption areas. Currently it is legal for only edible marijuana products to be consumed in marijuana consumption areas.

[Shall it be legal in the Municipality for licensed retail marijuana]
stores to allow marijuana consumption by smoking or inhalation

in on-site consumption areas, in a manner consistent with applicable law and amendments to the related Anchorage Municipal Code as described below?

As of October 2019 applicable law includes the following requirements for marijuana consumption areas where smoking or inhalation is allowed:

- Shall be separated by a secure door from the retail store [and ventilated, either in separate rooms] or in sight-obscured outdoor areas.
- Shall only be accessible from the retail marijuana store premises.
- The odor of marijuana is not allowed to be detected by a person with a normal sense of smell at any lot line.
- A smoke-free area for employees shall be provided, to monitor the marijuana consumption area at all times to ensure consumption is in compliance with applicable law.
- Signs in the consumption area warning that marijuana
  - has intoxicating effects.
  - impairs concentration, coordination and judgment, and not to operate a vehicle or machinery under its influence.
  - has health risks.
  - use is restricted to adults twenty-one years and older.
  - should not be used by women who are pregnant or breastfeeding.
  - is unlawful to consume in public.
  - is prohibited by federal law to transport or carry on the Alaska waterways, including by cruise ships, or by air carrier.
  - is prohibited by federal law to transport or ship outside of the State of Alaska, and
  - is unlawful to provide to persons under the age of 21.

In addition, if this proposition is approved the Anchorage Municipal Code will be amended as provided in AO 2019-[insert AO no.] to add these additional legal requirements or restrictions:

- Up to one gram of marijuana bud or flower may be sold by a licensed retail store to any one person per day for on-site consumption.
- The operating plan submitted with an application for an on-site consumption endorsement shall include plans for immediate cessation of smoking and inhalation use by persons in the consumption area, extinguishment of lighted marijuana, and rapid clearing of visible smoke in case of emergency circumstances.
- Additional signs required in the consumption area or at its entrance access:
  - “Drive under the influence – lose your car” and describing applicable penalties.
  - “Exposure to secondhand marijuana smoke may be harmful to your health, have intoxicating effects, and cause a positive drug test result.”
• **Amendments to the Secondhand Smoke Control Ordinance, AMC Chapter 16.65, that**
  
  o **Excepts approved on-site consumption areas from the prohibitions on smoking in enclosed public places and enclosed areas that are places of employment.**
  
  o **Implements the smoke-free area requirements for employees to monitor the consumption area consistent with the requirements of AMC chapter 10.80,**
  
  o **Prohibits employees from entering the marijuana consumption area when in use for smoking, except in emergency circumstances,** and
  
  o **Incorporates by reference the ventilation requirements of AMC sections 10.80.306 and 21.05.055 for the consumption area.**

**[Under applicable law on October 2019, marijuana consumption areas where smoking or inhalation is allowed are would be] required to be isolated and ventilated, and either in separate rooms or sight-obscured outdoor areas. The marijuana consumption areas can only be accessible from the retail marijuana store premises. Signs warning of the intoxicating effects, health risks, age restriction, and federal law prohibitions on transport or shipment are required.** The odor of marijuana is not allowed to be detected by a person with a normal sense of smell at any lot line where marijuana consumption areas are located [per current Code for all marijuana establishments]. A retail marijuana store is required to provide a smoke-free area for employees to monitor the marijuana consumption area at all times to ensure consumption is in compliance with applicable law [state and municipal laws, ordinances, regulations] and license conditions.

*If this proposition is approved by the voters, Anchorage Municipal Code will be amended [to conform with the above requirements and restrictions] as shown in AO 2019 [insert AO No.] to allow up to one gram of marijuana bud or flower to be sold by a retail store to any one person per day, require applications for an on-site consumption endorsement to include a plan to cease consumption and rapidly ventilate and clear the consumption area of visible smoke in case of emergency circumstances, amend the Secondhand Smoke Control ordinance to except marijuana consumption areas from its prohibition and be consistent with applicable Code regulating them, and prohibit employees from entering the consumption area when in use for smoking except in emergency circumstances. Also, Code amendments will require additional signs warning that driving under the influence may result in losing the vehicle and describing the penalties, and that exposure to secondhand*
marijuana smoke may be harmful to health, have intoxicating effects, and result in positive drug test results.

[Shall it be legal in the Municipality for freestanding retail marijuana stores to allow marijuana consumption by smoking or inhalation in on-site consumption areas as described above?]

Shall it be legal in the Municipality for licensed retail marijuana stores to allow marijuana consumption by smoking or inhalation in on-site consumption areas?

Yes [ ] No [ ]

Section 3. Subject to the effective date provision in Section 5 of this ordinance, Anchorage Municipal Code section 10.80.306 is hereby amended to read as follows (the remainder of the section is not affected and therefore not set out):

10.80.306 On-site consumption endorsement for retail marijuana stores.

A. Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved on-site consumption endorsement is authorized to:

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2. Sell for consumption on the premises, to any one person per day:
   a. marijuana bud or flower in quantities not to exceed one gram; and [RESERVED.]
   b. Edible marijuana products in quantities not to exceed ten mg of THC [TO ANY ONE PERSON PER DAY].

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C. A marijuana consumption area shall have the following characteristics:

1. The consumption area, whether indoor or outdoor, shall be isolated from the other areas of the retail marijuana store, separated by walls and a secure door, and shall have access only from the retail marijuana store;

2. A smoke-free area for employees to monitor the marijuana consumption area, consistent with subsection 16.65.030A.5. of the Secondhand Smoke Control Ordinance; and
3. If consumption by inhalation or smoking is to be permitted, a ventilation system that directs air from the marijuana consumption area [TO THE OUTSIDE OF THE BUILDING] through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line.

D. An applicant for an on-site consumption endorsement must file an application on a form prescribed by the municipal clerk, including the documents and endorsement fee set out in this section, which must include:

1. The applicant's operating plan, in a format the planning department prescribes, describing the retail marijuana store's plan for:

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   b. Ventilation, if consumption by inhalation or smoking is to be permitted, ventilation plans must be:

      i. Signed and approved by a licensed mechanical engineer;

      ii. Designed so there is no visible smoke in the retail area or at the lot line; and

      iii. Consistent with all applicable building codes and ordinances.

   c. If any of the marijuana consumption area is outdoors, compliance with sections 16.65.030A.5., 21.05.055, or 21.50.420, as applicable.

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   e. Controlling unconsumed marijuana, by disposal or by packaging in accordance with section 10.80.345; [AND]

   f. Preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for on-site consumption; and

   g. Immediate cessation of smoking and inhalation use by persons in the consumption area, extinguishment of lighted marijuana, and rapid ventilation and clearing of visible smoke in case of emergency circumstances that pose a risk of serious injury or death to an individual in the consumption area.
Section 4. [Note, this section is newly added to the (S)-version.] Anchorage Municipal Code section 10.80.365 is amended to read as follows:

10.80.365 - Required consumer notices for retail marijuana stores.

A. A marijuana retail store must post, in a conspicuous location visible to customers, the following notices:
   1. "Consumption of marijuana in public is prohibited by law."
   2. "Transportation or carriage of marijuana or marijuana products on Alaska waterways, including cruise ships, or by air carrier is prohibited by federal law."
   3. "Transportation or shipment of marijuana or marijuana products outside of the State of Alaska is prohibited by federal law."
   4. "Providing marijuana to persons under the age of 21 is prohibited by law."

B. A marijuana retail store with a marijuana consumption area shall post, in a conspicuous location visible to customers entering and departing the consumption area, clear and legible signs with the following notice(s):
   1. “Drive under the influence – lose your vehicle/car” and describes applicable penalties for driving under the influence.
   2. “Exposure to secondhand marijuana smoke may be harmful to your health, an unborn child, and have intoxicating effects, and cause a positive drug test result.”

C. Notification signs required by this section must be at least 11 inches by 14 inches in size. Lettering must be at least one-half inch in height and in colors that contrast with the sign background color.

(AO No. 2017-17(S), § 13, 4-25-17)

Section 5[4]. Subject to the effective date provision in Section 5 of this ordinance, Anchorage Municipal Code sections 16.65.010 and 16.65.030 are hereby amended to read as follows (the remainder of the chapter and sections is not affected and therefore not set out):

16.65.010 - Prohibition of smoking.

A. Smoking is prohibited at the following places:
AO 2019-103(S) for a ballot proposition to allow on-site consumption of marijuana by smoking or inhalation

1. All enclosed public places within the Municipality of Anchorage, including, but not limited to, all businesses visited by the public [except approved on-site consumption areas operated by licensed retail marijuana stores], transportation facilities, waiting areas of public transit depots, buses, taxicabs, sports arenas, and other enclosed areas open to the public, except approved on-site consumption areas operated by licensed retail marijuana stores.

2. All enclosed areas that are places of employment, except [isolated] marijuana consumption areas operated by licensed retail marijuana stores in accordance with section 16.65.030A.5.

(AO No. 2006-86(S), § 1, 7-1-07; AO No. 2016-69, § 2, 7-26-16; AO No. 2019-39(S), § 1, 4-9-19)

16.65.030 - Exceptions; areas where smoking is not prohibited.

A. Smoking is not prohibited in the following places:

3. Outdoor areas of places of employment except the outdoor areas identified under AMC 16.65.010.

5. Marijuana consumption areas operated by [freestanding] licensed retail marijuana stores with a municipal endorsement under chapter 10.80. In these retail marijuana stores:

   a. the smoke-free area for employees to monitor the marijuana consumption area shall be either

      i. a separate room on the premises that uses a separate ventilation system and has real-time video monitoring consistent with section 10.80.720;

      ii. a separate room sharing a wall with the marijuana consumption area that contains a transparent window providing viewing of the whole area; or

      iii. otherwise designed and operated so the area for employees to monitor is smoke-free.

   b. employees shall not enter the marijuana consumption area when the consumption area is in use for smoking, and only enter if it is clear of visible smoke. Exception: employees may enter at any time
in emergency circumstances that pose a risk of serious injury or death to an individual.

c. any [indoor] marijuana consumption area shall be properly ventilated as required by sections 10.80.306 and 21.05.055.

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C. Nothing in this chapter shall be construed or interpreted to permit or allow smoking marijuana or marijuana products in public in violation of section 8.35.300 et seq.

(AO No. 2006-86(S), § 1, 7-1-07; AO No. 2015-65, § 2, 6-9-15)

Section 6[5]. Sections 3, [and] 4, and 5 shall be effective 30 days after certification of the results of the election only if the proposition in Section 2 and on the ballot is certified as approved by a majority of the qualified Municipality of Anchorage voters voting on the proposition at the April 7, 2020, regular municipal election. The remainder of this ordinance shall become effective immediately upon passage and approval of the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 8th day of October, 2019.

Chair

ATTEST:

Municipal Clerk
From: ASSEMBLY MEMBERS DUNBAR AND CONSTANT

Subject: AO 2019-103(S): AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUBMITTING TO THE QUALIFIED VOTERS OF THE MUNICIPALITY OF ANCHORAGE AT THE REGULAR MUNICIPAL ELECTION APRIL 7, 2020, A BALLOT PROPOSITION ASKING WHETHER TO ALLOW ON-SITE CONSUMPTION OF MARIJUANA BY SMOKING OR INHALATION AT RETAIL MARIJUANA ESTABLISHMENTS WITH A LICENSE ENDORSEMENT FOR SUCH ON-SITE CONSUMPTION; AND, SHOULD THE PROPOSITION BE APPROVED, PROVIDING FOR CONFORMING AMENDMENTS TO ANCHORAGE MUNICIPAL CODE CHAPTERS 10.80, LICENSING AND REGULATION OF MARIJUANA ESTABLISHMENTS, AND 16.65, SECONDHAND SMOKE CONTROL ORDINANCE.

On June 18, 2019, the Anchorage Assembly passed and approved AO 2019-66 adopting marijuana on-site consumption regulations for only edible marijuana products. That ordinance included some provisions that apply to on-site consumption by inhalation or smoking, even though that method of consumption was not authorized, in order to provide the public and licensees notice of the legal framework under which inhalation or smoking consumption would be regulated if authorized in the future.

This proposed ordinance is that next step. However, instead of the Assembly making the decision whether the use of marijuana by inhalation or smoking in consumption areas at licensed retail marijuana establishments should be legal within the Municipality, this ordinance presents that question to the voters at the April 2020 election.

There is a long-standing prohibition in the Secondhand Smoke Control Ordinance, Chapter 16.65 of the Anchorage Municipal Code, on smoking in enclosed public spaces, enclosed areas that are places of employment, and other specified indoor and outdoor areas. The Secondhand Smoke Control Ordinance was adopted in June of 2000, repealed and re-enacted in August of 2006, and then reaffirmed by a vote of the people on April 3, 2007 with 72% rejecting a referendum to repeal it. In June of 2015, the Assembly added smoking of marijuana and marijuana products to the Secondhand Smoke Control Ordinance by adoption of AO 2015-65. The sponsor recognized that:
It is one thing to use marijuana in a safe manner that affects only the user; it is too much to impose these unknown and little understood risks on the rest of us by putting us in circumstances where we are forced to inhale secondhand smoke.

See AM 352-2015. The limitations and restrictions on on-site consumption areas by AO 2019-66 and this proposed ordinance continue to respect this principle by ensuring that no one, including the employees at licensed retail marijuana stores with an on-site consumption endorsement, are forced to inhale secondhand marijuana smoke. Smoke-free areas for employees are required, and employees would be prohibited from entering the marijuana consumption area when in use for smoking, except in emergencies. The only persons exposed to secondhand smoke in the consumption areas are consenting adults who voluntarily enter, and, only in emergencies, first responders and employees. Even this exigent circumstance exposure is expected to be minimal because the consumption areas must be ventilated to remove visible smoke and retail store operators will be required to shut down all smoking and extinguish lighted marijuana when an emergency situation arises.

Additionally, it is unlawful to consume marijuana in or upon any public place under state law (AS 17.38.040) as well as Anchorage Municipal Code section 8.35.300. That encompasses nearly all outdoor spaces accessible to the public. In contrast to smoking tobacco products which is permitted in most outdoor public spaces, the only legal places in Anchorage to smoke marijuana or marijuana products currently is on private property closed to the public. If the voters approve the ordinance, tourists and renters without private property of their own would have a location to engage in the legal recreational consumption of marijuana by smoking or inhalation.

The proposition title, summary, and question in Section 2 of the ordinance is fashioned to provide the voters a comprehensible description of the legally required restrictions and limitations on on-site consumption areas in state law and Municipal Code. The voters need to understand the depth and effect of regulations in order to make an educated and informed decision at the ballot box. The summary describes regulations currently in the Code, and amendments in Sections 3, 4, and 5, that would be effective if the proposition is approved.

The S-version of the ordinance incorporates changes suggested at Assembly worksessions and Community and Economic Development Committee meetings. The significant changes are:

- Removal of the word “freestanding” from the proposition summary text, question, and the amending language to AMC section 16.65.030. The Alaska Marijuana Control Board promulgated regulations using this term, and not long after issued draft regulations to change its meaning which have not been approved yet. The term is not defined in building codes and its definition is vague and confusing. It is omitted because of the uncertain future it has and confusion it may cause the voters, but that omission does not alter the effect of the proposition and Code amendments proposed.

- Revised proposition language (p. 1 line 25 to p. 2 line 44) to refer to
“applicable law” in effect in October 2019 when the language was approved, to move the question before the description of current applicable law and the Code amendments that will be triggered if the proposition is approved, and to describe both of the foregoing in more detail for the voter.

- The proposition summary includes an explanation of the warning signs required in the consumption areas by current applicable law (page 2, lines 10-13), and that would be required by amendments by this ordinance if the proposition is approved (p. 2 lines 35-39). AO 2019-66 had enacted a provision similar to state regulations that required retail marijuana stores holding an on-site consumption endorsement to "[d]isplay all warning signs required under sections 10.80.360 and 10.80.365 within the marijuana consumption area, visible to all consumers." AMC subsection 10.80.306E.3. (emphasis added).

  - The signs required by AMC section 10.80.360 do not have a size requirement, and must state:
    - "Marijuana has intoxicating effects and may be habit forming and addictive."
    - "Marijuana impairs concentration, coordination, and judgment. Do not operate a vehicle or machinery under its influence."
    - "There are health risks associated with consumption of marijuana."
    - "For use only by adults twenty-one and older. Keep out of the reach of children."
    - "Marijuana should not be used by women who are pregnant or breast feeding."
  
  - The signs required by AMC section 10.80.365 are required to be at least 11 inches by 14 inches with lettering at least one-half inch in height and in colors that contrast with the background, and state:
    - "Consumption of marijuana in public is prohibited by law."
    - "Transportation or carriage of marijuana or marijuana products on Alaska waterways, including cruise ships, or by air carrier is prohibited by federal law."
    - "Transportation or shipment of marijuana or marijuana products outside of the State of Alaska is prohibited by federal law."
    - "Providing marijuana to persons under the age of 21 is prohibited by law."
  
  - In addition, the S-version adds a new AO Section 4 (page 4, line 37) to include new required warning signs visible to persons entering and departing the consumption areas that state (p. 5, line 9):
    - "Drive under the influence – lose your car" and describes applicable penalties for driving under the influence.
    - "Exposure to secondhand marijuana smoke may be harmful to your health, have intoxicating effects, and cause a positive drug test result."
• Adding AMC subsection 10.80.306D.1.g. (page 4, line 26) to require the operating plan submitted with an application for an on-site endorsement to include a plan for emergencies in the consumption area that pose a risk of serious injury or death to an individual and require the marijuana retail store to cease all smoking and inhalation use, extinguish any lighted marijuana, and rapidly clear the area of visible smoke. In an emergency, first responders may arrive at the scene, and employees are permitted to enter the consumption area. These required procedures in each operating plan for an on-site consumption area will minimize their exposure to secondhand marijuana smoke during an emergency.

• Rewording of the exceptions added to AMC section 16.65.010 for clarity. (Page 5, lines 37-45)

• Addition of a prohibition on employees of marijuana retail entering the marijuana consumption area when it is in use for smoking. (page 6, line 31) Employees may only enter if the consumption area is clear of visible smoke, or if there is an emergency that poses a risk of serious injury or death to someone. The prohibition was recommended by the Anchorage Health Department and is consistent with the spirit of the Secondhand Smoke Control Ordinance and its objective to protect employees from smoke in places of employment.

Current staffing in the Planning Department and Clerk’s office, as well as plan review and inspection fees, will cover any costs to implement the procedures for on-site consumption applications. This ordinance would provide additional opportunities for economic growth for retail marijuana stores, but the amount of that impact cannot be predicted or measured. Therefore, a summary of economic effects is not included.

We request your support for AO 2019-103(S).

Prepared by: Assembly Counsel
Respectfully submitted: Forrest Dunbar, Assembly Member
District 5, East Anchorage
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