

Quasi-Judicial Hearings

How part of being the awesome legislator you are means sometimes *kind of not* being a legislator


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From Chugiak to Girdwood, every neighborhood in the Municipality of Anchorage is represented on the Anchorage Assembly. With members elected by you and your neighbors, the Assembly creates, passes and amends local laws, and approves the Municipality's budget. We invite you to learn more about what we do and get involved.

1

1. **Alcohol Licenses, including renewals/transfers/appeals** (2.30.120)
2. **Alcohol Special Land Use Permits (SLUPs)** (21.03.040)
3. Deteriorated Property Taxation Exemption or Deferral (12.35.050)
4. Disaster Relief Eligibility Appeals (12.15.025)
5. Economic Development Property Partial or Total Exemption of Taxation (12.35.040)
6. Elected Official Removal (2.70.030)
7. Election Certification (28.85.040)
8. Excavation Appeals on Increased Security Requirements, Charges to Protect the Public & Suspension or Revocation of an Excavation Permit (24.40.150)
9. Invalid Special Assessments Correction (19.20.340)
10. **Marijuana Licenses, including renewals/transfers/appeals** (10.80)
11. **Marijuana Special Land Use Permits (SLUPs)** (21.03.105)
12. Municipal Lands Disposal that does not require Voter Approval (25.30.020)
13. Public Facility Site Selections for Municipal Facilities (21.03.140)
14. Public Facility Site Selections for Non-Municipal Facilities Appeals (21.03.140)
15. Public Nuisance Assessment of Real Property Improvements (12.15.030)
16. Refund of Certain Moneys Erroneously Paid to the Municipality (6.30.090)
17. Removal of Appointed Official by the Assembly (3.30)
18. Rezone proposal Protest (21.03.160)
19. Roll Determination Special Assessment (19.20.060)
20. Sewer Levy Assessments (19.80)
21. Street Name Alteration Protest (21.03.185)
22. Tax Incentives or Relief Applications & Appeals (12.35.010)
23. Water Levy Assessments (19.90)



**Quasi-Judicial
Matters**

2



3



4

Our “Quasi” Agenda



- Introduction to “Quasi-Judicial”
- Due Process
- Ex Parte Communication
- Evidence
- Paths to Obtaining Alcohol & Marijuana Licenses
- An *Introduction* to the Criteria the Assembly should use
- Quasi-Judicial Deliberation

5

An introduction to (or perhaps a re-intro to) Quasi-Judicial Procedures

What does Quasi-Judicial mean for everybody?

- Municipality Charter - Article II - Bill of Rights

“This Charter **guarantees rights to the people of Anchorage** that are in addition to rights guaranteed by the **Constitution of the United States . . .**”



- United States Constitution 5th and 14th Amendments

“No person shall be . . . deprived of **life, liberty, or property, without due process of law.**”



- Alaska Constitution Art. 1, Sec. 7, Due Process

“No person shall be deprived of life, liberty, or property without due process of law. **The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.**”



6

What does Quasi-Judicial mean for everybody?

The fundamental requirement of due process is the opportunity to be heard
“at a meaningful time and in a meaningful manner”

- Mathews v Eldridge, 424 U.S. 319, 333, 96 S. Ct. 993, 902, 47 L. Ed. 2d 18 (1976)

“Due process is flexible and calls for such procedural protections as the particular situation demands.”

Mathews v. Eldridge Balancing Test

1. The private interest that will be affected by the official action
2. The risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards
3. The government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

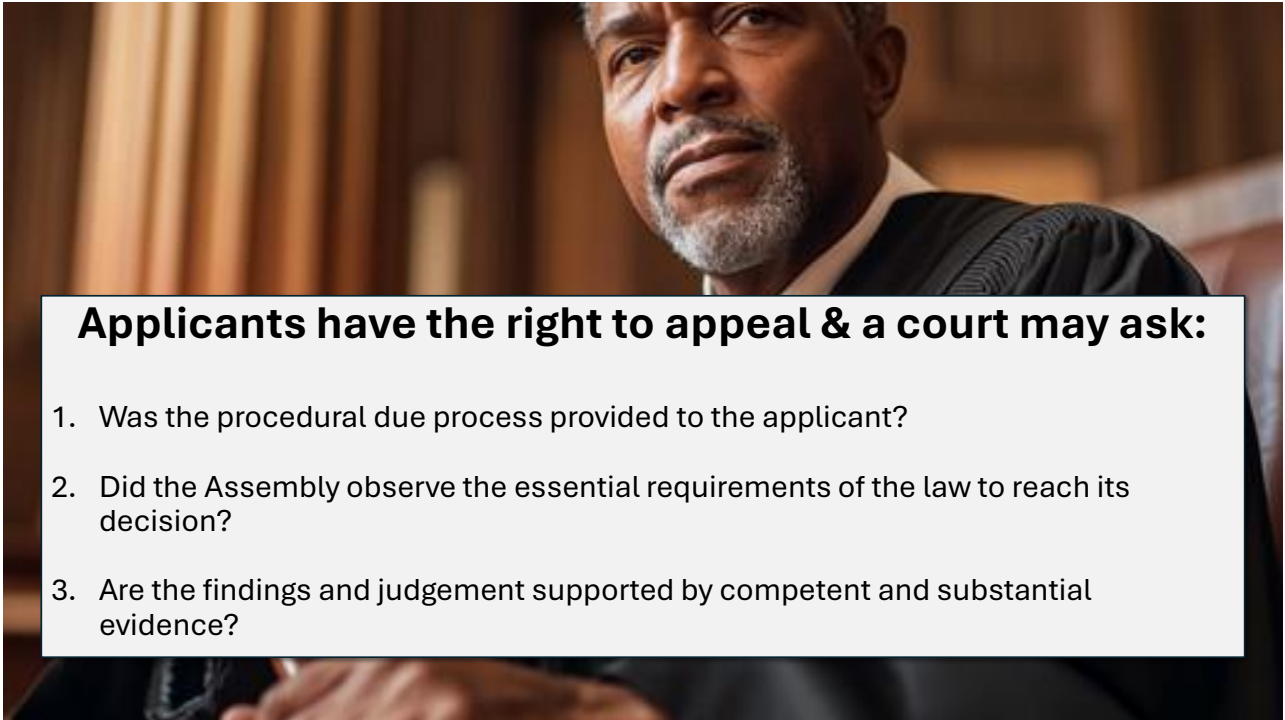
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What does Quasi-Judicial mean for the Assembly?

- **Your legislative role:** the power to *make policy*
- **Your quasi-judicial role:** the power to *apply those policies to individual cases*

- You use set criteria and defined standards that apply equally to all.
- “Arbitrary and capricious”
- What about . . . public opinion, outside criteria, or your belief systems?

8



Applicants have the right to appeal & a court may ask:

1. Was the procedural due process provided to the applicant?
2. Did the Assembly observe the essential requirements of the law to reach its decision?
3. Are the findings and judgement supported by competent and substantial evidence?

9



Quasi-Judicial Rules of Engagement

1. **Don't make up your mind before (*or really, during*) the hearing on an application**
2. **Don't use your own evidence or be a witness in a hearing**
3. **Don't make prejudiced pre-hearing statements or engage with any interested parties outside of the hearing (Also, don't undermine the decision)**

10



Quasi-Judicial Rules of Engagement

SAMPLE SCRIPT

Thank you for your interest, but I can't talk to you about this application outside of the upcoming hearing. I'd like to hear your views, but I need to hear and consider the evidence only through our public hearing process.

Please plan to attend the hearing if you can. If you can't attend, you can send written comments to our staff, and they'll include these comments in the hearing materials.

11

Do you think I would engage in **Ex Parte** communication?

Well, do you?



2.90.030 – Ex Parte contacts prohibited

What is Ex Parte?

If you, as a *decision-making official*, engage in a conversation or exchange information with only 1 party or members of the public without the presence or knowledge of other parties involved

When do Ex Parte rules begin?

Upon publication of the item on the agenda or during the period of time the matter is subject to reconsideration

What if you engage in ex parte communication?

Disclose any such communication or contact you've had at the hearing or to your staff

12

Evidence

2.90.040

“Point of Information”
(or “Request for Information”)

Ask the Chair / Ask Counsel:

“Should this evidence be considered?”

- Relevant evidence and Hearsay evidence
- Is the evidence **competent**?
- Is the evidence **substantial**?

13

Public Participation

- **Purpose:** to ascertain the reaction of the public to all license & SLUP issuances
- **Notices** of all hearings are sent to community council w/in 1000' of business
- **Notices** to property owners w/in 500' for new licenses and SLUP's
- **The Assembly considers all of the following in a public hearing:**
 - written objections
 - suggested conditions
 - petitions
 - any testimony

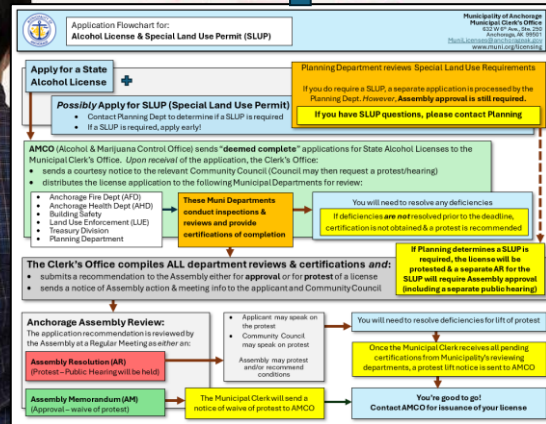
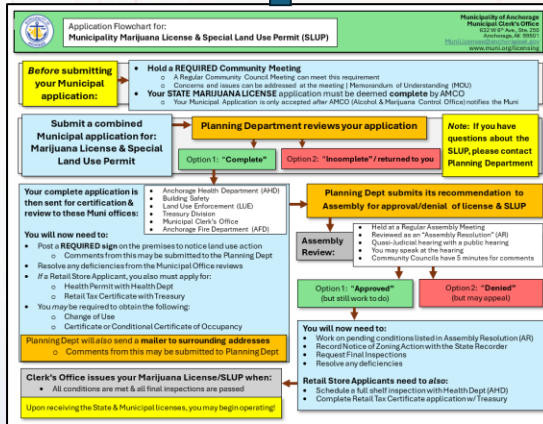
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Additional Marijuana Information:

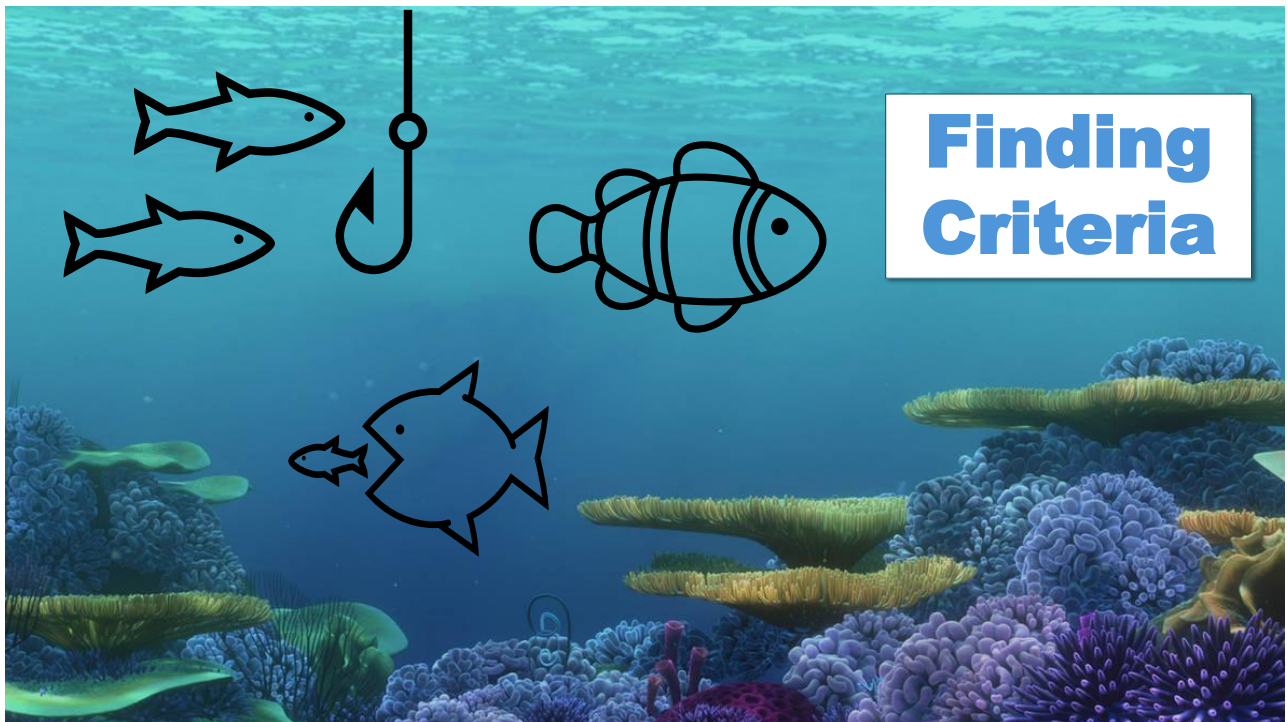
- Marijuana License & SLUP Application Flowchart

Additional Alcohol Information:

- Alcohol License & SLUP Application Flowchart



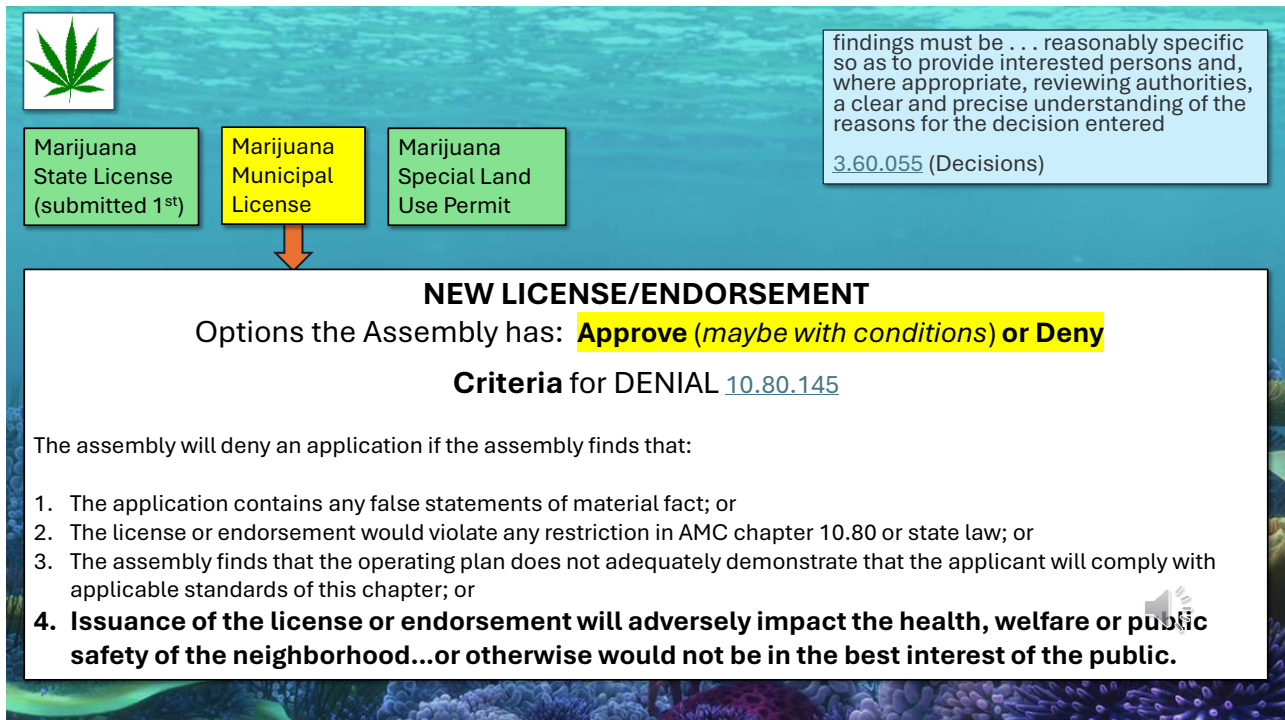
15



16

Criteria for Alcohol Licenses		Criteria for Marijuana Licenses	
General Information:	10.50 – Licensing & Regulation of Alcohol	General Information:	10.80 – Municipal Licensing & Regulation of Marijuana
Reviewing State Licenses (new/renew/transfer)	2.30.122 – Assembly Review & Action on State Alcohol License 2.30.123 – Standards Governing Review of State Alcohol License 2.30.124A – Standards for Contesting to State Alcohol Beverage Control Board		10.80.115 – License Restrictions AS 17.38 – Alaska Statutes – Regulation of Marijuana 3 AAC 306 – Regulation of Marijuana Industry
Special Land Use Permits	21.03.080D – Approval Criteria (Used by Planning & Assembly) 21.03.040 – Special Land Use Permit – Application & Review	New License/Endorsement:	10.80.145 – Denial of Application
Protests to State (Pattern of Unlawful Conduct)	2.30.124B – Notice of Possible Protest	Special Land Use Permit:	21.03.105C.7 – Marijuana – Special Land Use Permit
Reports of Violations	2.30.126 – Report of violations of Conditions of Licenses 3.60 – Administrative Adjudication (including hearing procedures)	Renewal:	10.80.145 – Denial of Application
		Transfer:	10.80.120 – Transfer of License and/or endorsement
		Suspension/Revocation/Fines:	10.80.610.C – Suspension or revocation 10.80.135 – Procedure for action on license/endorsement 3.60 – Administrative Adjudication (including hearing procedures) 14.60.030 – Fine Schedule

17



18



Marijuana State License (submitted 1st) **Marijuana Municipal License** **Marijuana Special Land Use Permit**

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SLUP – Your Options: Approve (maybe with conditions) or Deny

Criteria for APPROVAL [21.03.105C.7](#)

The proposed use is:

- a. consistent with the comprehensive plan, all applicable provisions of this title, and applicable state regulations
- b. consistent with the purpose and intent of the zoning district in which it is located. . .
- c. consistent with applicable use-specific standards set forth in [Chapter 21.05](#)
- d. compatible with uses allowed on adjacent properties . . .
- e. appropriately located with respect to (utilities/fire & police protection, etc.)
- f. Any significant adverse impacts anticipated can be mitigated/offset to the maximum extent feasible

The owner/operator:

- g. has no previous denials/revocations of a marijuana license/SLUP (or sufficient evidence of rehabilitation)
- h. has meaningfully engaged in neighborhood responsibility planning . . .

findings must be . . . reasonably specific so as to provide interested persons and, where appropriate, reviewing authorities, a clear and precise understanding of the reasons for the decision entered

[3.60.055](#) (Decisions)

19



Marijuana State License (submitted 1st) **Marijuana Municipal License** **Marijuana Special Land Use Permit**

findings must be . . . reasonably specific so as to provide interested persons and, where appropriate, reviewing authorities, a clear and precise understanding of the reasons for the decision entered

[3.60.055](#) (Decisions)

The grounds for SUSPENSION, REVOCATION or RESTRICTION... [10.80.610.C](#)

. . . when the assembly finds a licensee:

Criteria *(note: only some of the criteria is listed here)*

d. is following any practice or procedure that is contrary to public health and safety:

- i. Demonstrates the inability to maintain order and prevent unlawful conduct in the licensed premises
- iii. Has taken or authorized other actions that pose risks to public health or safety
- v. Knowingly allowed an employee or agent to violate state law, this chapter, or a condition or restriction imposed by the assembly, including a condition on a special land use permit for marijuana

20

Quasi-Judicial Deliberation

- Having criteria ready
 - You don't have to memorize it.
 - Ask staff or counsel if you're unsure
- Scripts can be of great help as they help establish the Assembly's ground rules
- Discussion
 - May be helpful to you and the Assembly
 - It's also helpful for the Public

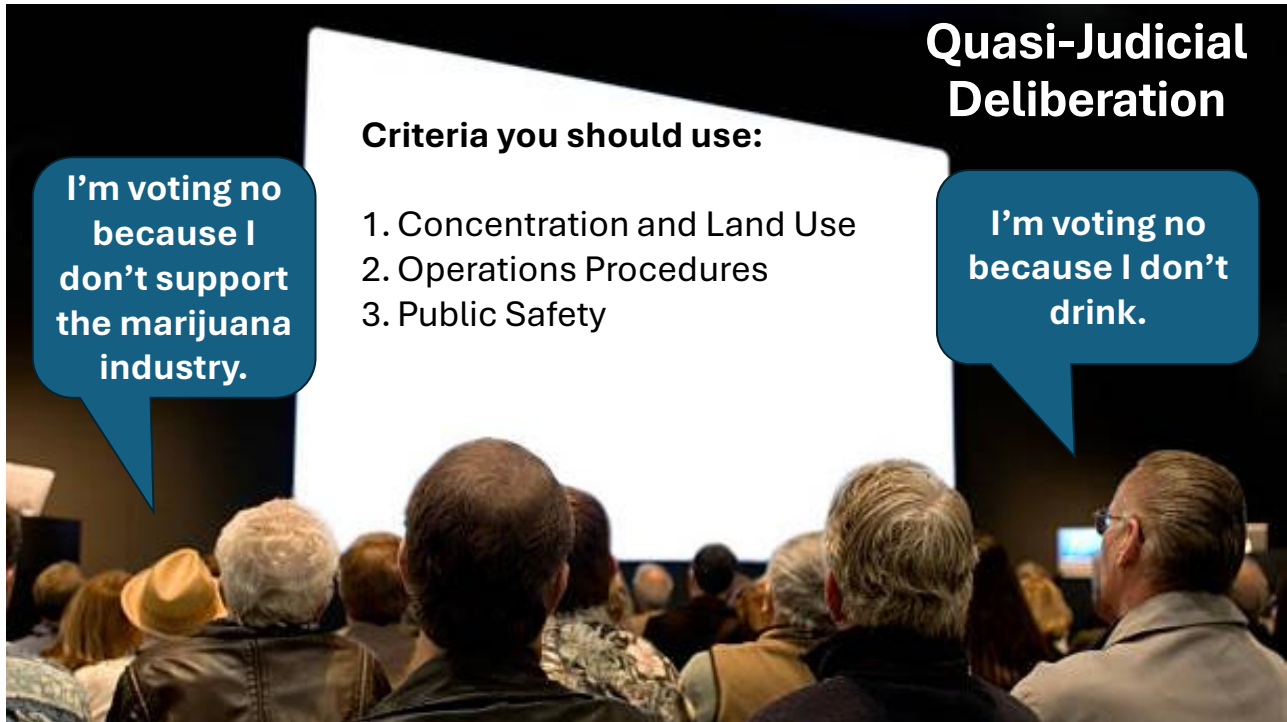
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Quasi-Judicial Deliberation

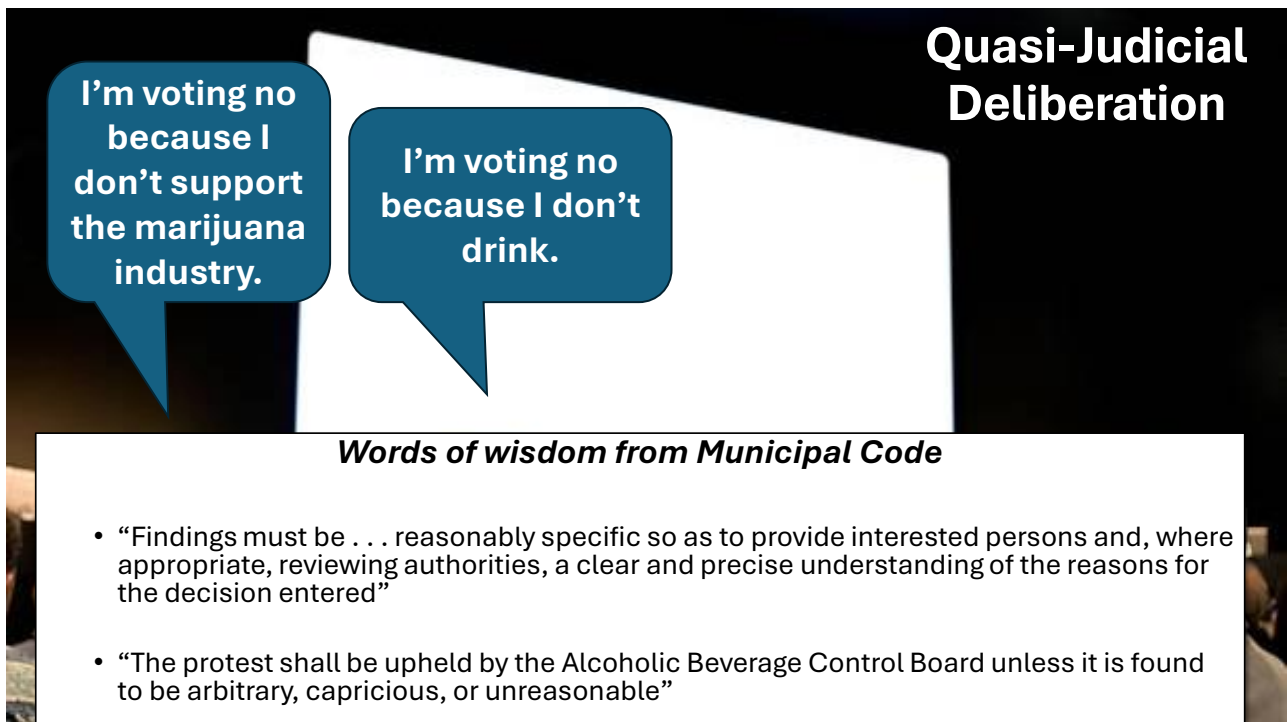
Things to ask . . .

- Ask yourself if the way you are voting is based on criteria.
- If there are no facts to support voting no, do you feel like you can explain why you're voting no?
- Ask for **Floor Amendments** to insert findings that help explain your decision and to provide grounds for your intended yes/no.

22



23

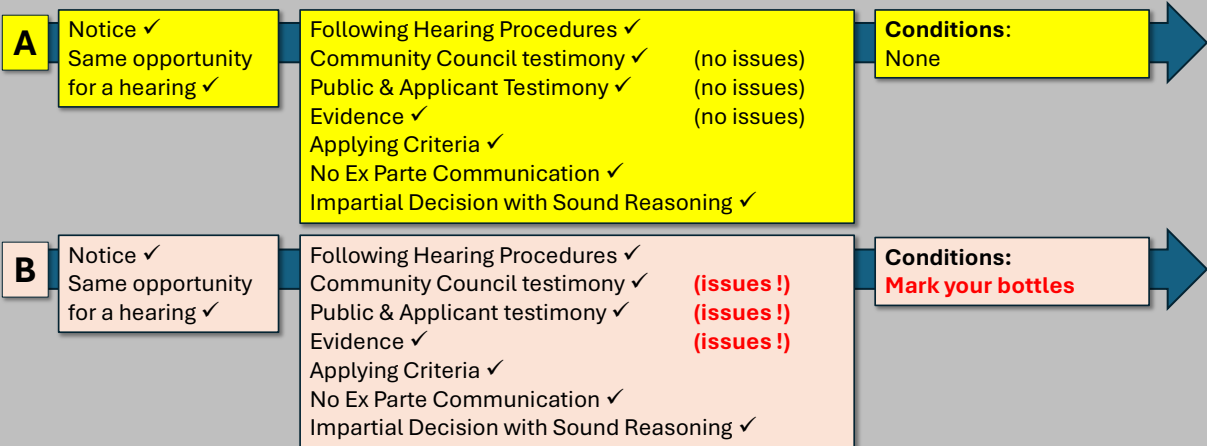


24

What is fair?

“If we place a condition on this licensee to mark their bottles, doesn’t this mean we have to do the same for every other business? Wouldn’t that be the fair thing to do?”

Answer: What is fair is to follow the same quasi-judicial procedures for each licensee, rather than to arrive at the same conclusions for each licensee



25

Any questions?

“Of course you’re not really a judge like me . . . I mean, come on.”

What this judge would probably say if he was here.



26



Application Flowchart for:
Municipality Marijuana License & Special Land Use Permit (SLUP)

**Municipality of Anchorage
Municipal Clerk's Office**
632 W 6th Ave., Ste. 250
Anchorage, AK 99501
MuniLicenses@anchorageak.gov
www.muni.org/licensing

**Before submitting
your Municipal
application:**

- **Hold a REQUIRED Community Meeting**
 - A Regular Community Council Meeting can meet this requirement
 - Concerns and issues can be addressed at the meeting | Memorandum of Understanding (MOU)
- Your **STATE MARIJUANA LICENSE** application must be deemed **complete** by AMCO
 - Your Municipal Application is only accepted *after* AMCO (Alcohol & Marijuana Control Office) notifies the Muni

**Submit a combined
Municipal application for:
Marijuana License & Special
Land Use Permit**

Planning Department reviews your application

**Note: If you have
questions about the
SLUP, please contact
Planning Department**

Option 1: **"Complete"**

Option 2: **"Incomplete"** / returned to you

**Your complete application is
then sent for certification &
review to these Muni offices:**

- Anchorage Health Department (AHD)
- Building Safety
- Land Use Enforcement (LUE)
- Treasury Division
- Municipal Clerk's Office
- Anchorage Fire Department (AFD)

You will now need to:

- Post a **REQUIRED sign** on the premises to notice land use action
 - Comments from this may be submitted to the Planning Dept
- Resolve any deficiencies from the Municipal Office reviews
- *If a Retail Store Applicant, you also must apply for:*
 - Health Permit with Health Dept
 - Retail Tax Certificate with Treasury
- You *may* be required to obtain the following:
 - Change of Use
 - Certificate or Conditional Certificate of Occupancy

Planning Dept will *also* send a **mailer to surrounding addresses**

- Comments from this may be submitted to Planning Dept

Clerk's Office issues your Marijuana License/SLUP when:

- All conditions are met & all final inspections are passed

Upon receiving the State & Municipal licenses, you may begin operating!

**Planning Dept submits its recommendation to
Assembly for approval/denial of license & SLUP**

**Assembly
Review:**

- Held at a Regular Assembly Meeting
- Reviewed as an "Assembly Resolution" (AR)
- Quasi-Judicial hearing with a public hearing
- You may speak at the hearing
- Community Councils have 5 minutes for comments

Option 1: **"Approved"**
(but still work to do)

Option 2: **"Denied"**
(but may appeal)

You will now need to:

- Work on pending conditions listed in Assembly Resolution (AR)
- Record Notice of Zoning Action with the State Recorder
- Request Final Inspections
- Resolve any deficiencies

Retail Store Applicants need to *also*:

- Schedule a full shelf inspection with Health Dept (AHD)
- Complete Retail Tax Certificate application w/ Treasury



Application Flowchart for:
Alcohol License & Special Land Use Permit (SLUP)

**Municipality of Anchorage
Municipal Clerk's Office**
632 W 6th Ave., Ste. 250
Anchorage, AK 99501
MuniLicenses@anchorageak.gov
www.muni.org/licensing

**Apply for a State
Alcohol License**



Possibly Apply for SLUP (Special Land Use Permit)

- Contact Planning Dept to determine if a SLUP is required
- If a SLUP is required, apply early!

Planning Department reviews Special Land Use Requirements

If you do require a SLUP, a separate application is processed by the Planning Dept. *However, Assembly approval is still required.*

If you have SLUP questions, please contact Planning

AMCO (Alcohol & Marijuana Control Office) sends “**deemed complete**” applications for State Alcohol Licenses to the Municipal Clerk’s Office. *Upon receipt* of the application, the Clerk’s Office:

- sends a courtesy notice to the relevant Community Council (Council may then request a protest/hearing)
- distributes the license application to the following Municipal Departments for review:

- Anchorage Fire Dept (AFD)
- Anchorage Health Dept (AHD)
- Building Safety
- Land Use Enforcement (LUE)
- Treasury Division
- Planning Department

**These Muni Departments
conduct inspections &
reviews and provide
certifications of completion**

You will need to resolve any deficiencies

If deficiencies **are not** resolved prior to the deadline,
certification is not obtained & a protest is recommended

The Clerk’s Office compiles ALL department reviews & certifications and:

- submits a recommendation to the Assembly either for **approval** or for **protest** of a license
- sends a notice of Assembly action & meeting info to the applicant and Community Council

**If Planning determines a SLUP is
required, the license will be
protested & a separate AR for the
SLUP will require Assembly approval
(including a separate public hearing)**

Anchorage Assembly Review:

The application recommendation is reviewed by the Assembly at a Regular Meeting as *either* an:

Assembly Resolution (AR)
(Protest – Public Hearing will be held)

Assembly Memorandum (AM)
(Approval – waive of protest)

- Applicant may speak on the protest
 - Community Council may speak on protest
- Assembly may protest and/or recommend conditions

You will need to resolve deficiencies for lift of protest

Once the Municipal Clerk receives all pending certifications from Municipality’s reviewing departments, a protest lift notice is sent to AMCO

The Municipal Clerk will send a notice of waive of protest to AMCO

**You’re good to go!
Contact AMCO for issuance of your license**

Criteria for Marijuana Licenses

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