

Marijuana odor investigation policy

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Interdepartmental Coordination of Marijuana Odor Monitoring and Investigations

Policy

The Municipality of Anchorage's policy is to enforce the state and local law prohibitions on marijuana odor sourced from marijuana establishments in a fair and impartial manner, respecting the legal rights of marijuana establishments and of the persons and properties around them, for the protection of the public health, safety and welfare. The protocols described herein to effectuate this policy are for guidance and notice to the public and the industry. Every situation is unique and under any given circumstances there may be justification for deviating from the guidance provided herein. Each enforcement action is adjudicated on its own merits, and strict adherence to this policy and protocols or deviation from it should not be considered of probative value alone to support or defend any particular enforcement or license action.

The experience of Land Use Enforcement Officers and police officers in investigating and inspecting marijuana-related crimes and inspecting marijuana establishments, and exposure to legal marijuana uses is important and informs the protocols herein. They are designed to ensure a marijuana odor is detectable, the source identifiable, and consistent over a period of time rather than fleeting. Experience in administrative hearings and court proceedings guides the protocols for the level and quality of evidence and the witnesses sensory perception needed to uphold a citation for violations or adverse licensing actions and withstand legal challenges.

Odor inspection protocols

1. Witnesses. Code enforcement or police officers are necessary witnesses to odor violations, to corroborate complaints from neighbors or the public of marijuana odor crossing the property line.
2. Officers. Site visits for collecting odor evidence should be conducted by two (2) or more officers at the same time. Officers should have a normal sense of smell. If an officer has a cold or other illness or symptoms affecting olfactory senses, that should be noted.
3. Weather. Current weather conditions should be noted: temperature, wind direction (if any) and characteristics, any current precipitation, and other conditions.
4. Location. Odor detection should be at or near the property lines, but never inside the lot lines. Officers should follow the perimeter of the lot. When odor is detected, note location. Also note if any other identified sources of marijuana odor in the proximity such as other licensed premises or a non-licensed presence of marijuana (personal use or grow) are detected,
5. Duration threshold. Odor wafts and wanes. A brief scent of marijuana that disappears and is not detected for a substantial length of time should not suffice to find a violation. Odor that is brief but repeatedly or continuously detected in a consistent fashion for more than five (5) consecutive minutes or more may suffice.

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6. Notice. No notice is required prior to investigating a site for the odor of marijuana at the property line consistent with this policy. Prior to leaving the site, the Officer(s) shall notify the manager/supervisor of the facility that a complaint was made or they were doing a random inspection and their findings.
7. Miscellaneous. [ideas?]

Interdepartmental Coordination of Evidence in Marijuana Odor Monitoring and Investigations

This Interdepartmental Coordination document is a guide for reporting marijuana odor inspections between the Municipal Clerk's Office ("Clerk"), Anchorage Police Department ("APD"), Land Use Code Enforcement Division ("LUE"), and Anchorage Health Department.

The purpose of this Coordination document is to set out common protocols and parameters for the detection of the odor of marijuana from licensed establishments, and the steps to coordinate among the parties for sharing the identification of serial odor violations and complaints, and the documentation of site inspections of such marijuana establishments that are the subject of multiple odor violations, and preservation of evidence of these.

All investigations:

- Shall use the policy and protocols as the general guidelines when conducting investigations.
- Site visit or investigation reports from other departments shall be sent to LUE by e-mail to [email address?]
 - E-mail subject field should describe the content including "MJ Odor report" or similar.
 - E-mail content shall be limited to only information and communication necessary to the report and other potential municipal code or state law violations observed. The e-mail should not include discussion of other subjects or parties, or other issues unrelated to reporting of observed violations.
- When a NOV or citation is issued as a result, e-mail the Municipal Clerk at MuniLicenses@anchorageak.gov

Land Use Enforcement.

1. Responsible to maintain the records of complaints and investigations in its database. The central records location.
2. Primarily responsible for investigations during normal working hours. This does not preclude investigations and site visits by other department's officers during such hours.
3. Receives reports of site visits and investigations from APD, AHD, AMCO or other code or law enforcement officials
4. When investigation reports are received from APD, AHD, AMCO or other code or law enforcement officials, to log them in to the appropriate database. The person logging such information shall contact the reporting investigator(s) for any lacking information or clarification.

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5. Shall communicate to the point of contact of the other departments the name and location of a marijuana establishment that is identified as a “serial marijuana establishment odor source.”
6. May plan and implement a monitoring program for a serial marijuana establishment odor source that dedicates staff and resources for a series of site odor investigations over a defined period of time. A monitoring program may include utilization of other departments’ staff, with the consent of that department.

Anchorage Police Department.

1. Shall establish a captain or lieutenant as the point of contact for LUE for purposes of this policy and coordination.
2. Is primarily responsible for site odor investigations that occur during time other than normal working hours, for both #3. serial marijuana establishment odor sources, and #5. any detected odor while on duty. Generally between 5 p.m. to 8 a.m. on Monday nights through Thursday, and between 5 p.m. Fridays to the following Monday at 8 a.m.
3. Shall provide direction to patrol officers who are to conduct random once-daily site visits of serial marijuana establishment odor sources.
4. Shall not prioritize site visits or investigations over its usual calls for service prioritization.
5. Should instruct all patrol officers to initiate an odor inspection immediately upon detecting an odor of marijuana when they are near a marijuana establishment’s property line, if they are not engaged in a call for service or other priorities.
6. Should educate all patrol officers on the protocols in this document for odor inspections.
7. Patrol officers submitting a report of odor detection shall send such report by e-mail to the LUE designated email address above.
8. Should make reporting officers available for subsequent administrative or adjudicative hearings to authenticate and testify to their report, if requested by LUE or the Municipal Clerk.

Anchorage Health Department.

[placeholder]

Definitions. All definitions of municipal code and state law regarding marijuana regulation and establishments are applicable. The below definitions are for this policy, and applicable in general in the context of marijuana odor issues within the Municipality.

“Odor” can be defined as the subjective experience humans have when our olfactory organs are stimulated by individual volatile organic compounds (VOCs) that have been emitted into the nearby air.

“Odor Detection Thresholds.” Commonly referred to as ODTs, odor detection thresholds are a scientific name for the concentration at which a VOC’s odor will first be detectable by the average human nose.

“Serial marijuana establishment odor source” or “serial odor violator” and variants of these means a licensed marijuana establishment that has six (6) complaints logged in the last year, or 18 in the past (3) years. [OR: ...a substantial number of complaints logged in the past three (3) years and at least two (2) citations or notices of violation issued and upheld or paid without challenge in the past ten (10) years.]

“Site odor investigation” means a site visit for purposes of determining whether there is a detectable odor of marijuana consistent with the guidelines and protocols described in this document.

Relevant law

(Note: state law related to odor from marijuana consumption areas is omitted.)

AMC 10.80.430 - Restricted access area.

- A. A marijuana cultivation facility shall conduct any operation in a restricted access area in compliance with section [10.80.710](#) and this section.
- B. A marijuana cultivation facility shall conduct any marijuana growing operation within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.
- C. A marijuana cultivation facility shall ensure that any marijuana at the marijuana cultivation facility:
 1. Cannot be observed by the public from outside the cultivation facility; and
 2. **Does not emit an odor that is detectable by the public from outside the marijuana cultivation facility, except as allowed by special land use permit for marijuana.**
- D. A marijuana cultivation facility shall have full video surveillance of the licensed premises as required under section [10.80.720](#), including any area where marijuana is grown, processed, packaged, or stored, or where marijuana waste is destroyed.

AMC 10.80.735 - Health and safety standards.

- A. A marijuana establishment is subject to inspection by the Anchorage Fire Department, a Municipal building inspector, or code enforcement officer to confirm that no health or safety concerns are present and the establishment is in compliance with all municipal codes.
- B. A marijuana establishment shall take all reasonable measures and precautions to ensure that:
 - ...
 4. Litter, waste, and rubbish are properly removed; the waste disposal equipment must be maintained and adequate to:
 - a. Avoid contaminating any area where marijuana or any marijuana product is stored, displayed, or sold; and
 - b. **Prevent causing odors or attracting pests;**
 - ...

([AO No. 2016-16\(S\)](#), § 1, 2-9-16)

21.03.105 - Marijuana—Special land use permit.

- A. *Purpose.* This section governs the review and approval process for land use approvals associated with marijuana establishments, where this approval process is indicated in Table 21.05-1.

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C. *Application and review procedure.*

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3.

Application submittal. Applications for a municipal marijuana license, special land use permit for marijuana, and any associated endorsements, shall be submitted to the municipality on a form provided by the municipality, after application to the state marijuana control board has been accepted. Applications shall contain the information required in Title 10, and the following:

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b. For marijuana cultivation facilities:

i. A plan that specifies the methods to be used to prevent the growth of harmful mold.

ii. The projected amount of water that will be used.

iii. The projected amount of wastewater that will be discharged.

iv. A letter from the applicable electric utility stating that the power capacity at the proposed location is sufficient for the intended use.

v. An odor control plan indicating how the applicant will comply with the requirements of municipal and state law and regulation.

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(AO No. [2016-3\(S\)](#), § 4, 2-23-16; AO No. [2016-161](#), § 1, 1-10-17; AO No. [2017-55](#), § 6, 4-11-17; AO No. [2017-175\(S\)](#), § 2, 2-13-18; AO No. [2019-67](#), § 2, 6-18-19; AO No. [2020-9](#), § 1, 2-11-20; AO No. [2020-38](#), § 3, 5-28-20)

AMC 21.05.055 - Marijuana establishments.

This section defines specific commercial and industrial use types relating to marijuana growing, processing, production, testing, and sales, listed in Table 21.05-1. This section also contains use-specific standards that apply to specific use types. The use-specific standards apply regardless of the approval process for the particular use type. All uses involving the commercial cultivation, production, testing, and sales of marijuana are governed by this section; no other use in any other section shall involve marijuana. Personal cultivation and use of marijuana is not regulated by this section.

A. *Use-specific standards applicable to all marijuana establishments.*

1. *Licenses required.*

a. All marijuana establishments are required to obtain a license and associated endorsements from the State of Alaska Marijuana Control Board, and a license and associated endorsements from the municipality of Anchorage, before beginning operations.

b. If at any time either the state license or the municipal license is suspended or revoked, the establishment shall immediately cease operations, until such time as both required licenses and the land use approval are valid. If an endorsement is suspended or revoked, the establishment shall immediately cease operations authorized by that endorsement until such time it is valid.

c. Licenses and endorsements from the municipality of Anchorage shall be issued in accordance with [chapter 10.80](#).

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5. *Inspection of premises.* All premises of all marijuana establishments shall be open at all times during business hours for the inspection and examination by the municipality.

6. Ventilation. The premises shall be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at any lot line of the subject property.

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(AO No. [2016-3\(S\)](#), § 8, 2-23-16; AO No. [2016-35](#), § 1, 4-12-16; AO No. [2016-144\(S\)](#), § 1, 1-1-17; AO No. [2017-55](#), § 8, 4-11-17; AO No. [2017-175\(S\)](#), § 4, 2-13-18; AO No. [2019-67](#), § 3, 6-18-19; AO No. [2020-9](#), § 2, 2-11-20)

3 AAC 306.430. Restricted access area.

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(b) A marijuana cultivation facility shall conduct any marijuana growing operation within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Where not prohibited by local government, outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight-obscuring wall or fence at least six feet high.

(c) A marijuana cultivation facility shall ensure that any marijuana at the marijuana cultivation facility

(1) cannot be observed by the public from outside the marijuana cultivation facility; and

(2) does not emit an **odor** that is detectable by the public from outside the cultivation facility except as specifically allowed by a local government approval.

...

3 AAC 306.735. Health and safety standards.

(a) A marijuana establishment is subject to inspection by the local fire department, building inspector, or code enforcement officer to confirm that health or safety concerns are not present.

(b) A marijuana establishment shall take all reasonable measures and precautions to ensure that

...

(4) litter, waste, and rubbish are properly removed; the waste disposal equipment must be maintained and adequate to

(A) avoid contaminating any area where marijuana or any marijuana product is stored, displayed, or sold; and

(B) prevent causing **odors** or attracting pests;

...