

Introduced by:	Bagley
Date:	11/10/15
Hearing:	12/08/15
Action:	Postponed to 02/02/16
Date:	02/02/16
Action:	Enacted as Amended
Vote:	5 Yes, 4 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2015-27**

**AN ORDINANCE AMENDING KPB 7.10.020 TO CHANGE THE METHOD OF
MEASURING THE DISTANCE TO MATCH STATE STATUTE**

WHEREAS, in Ordinance 85-75 the assembly enacted Chapter 7.10 of the borough code providing grounds for protesting certain liquor license applications; and

WHEREAS, state law only restricts locating licensed premises within a building the public entrance of which is within 200 feet of a school ground or a church building in which religious services are regularly conducted, measured by the shortest pedestrian route from the outer boundaries of the school ground or the public entrance of the church building; and

WHEREAS, state law additionally provides that the Alcohol Beverage Control Board shall deny a liquor license application that has been protested by a municipality unless the board finds that the protest is arbitrary, capricious, and unreasonable; and

WHEREAS, revising the code to provide that the distance is measured by the shortest pedestrian route from the public entrance of the liquor licensed premises to the outer boundaries of the school ground or playground, or the public entrance of the church building, would be consistent with state statute and simplify the application process;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 7.10.020(A)(2) and KPB 7.10.020(D) are hereby amended as follows:

7.10.020. Assembly protest.

- A. The assembly shall cause a protest to be filed with the State Alcohol Beverage Control Board on any application submitted for a new license for the sale of alcoholic beverages, or any application requesting approval of a relocation of the licensed premises, or any application requesting approval of a transfer of a license to another person, or the continued operation of a license for the second year of the biennial license period, within the borough, in the following situations:

1. Where borough records indicate that the applicant and/or transferor is in violation of the borough sales, and/or personal and real property tax ordinances and regulations, has failed to comply with any of the filing, reporting or payment provisions of the borough ordinances or regulations, or has any unpaid balance due on tax accounts for which the applicant and/or transferor is liable. A protest shall not be filed for balances due secured by a payment agreement authorized by borough ordinances, as long as:
 - a. the applicant or transferor is in compliance with the payment agreement; and
 - b. the payment agreement requires payment in full by the end of the next license year; and
 - c. the applicant or transferor is involved in no more than two payment agreements within the prior five (5) years.

2. Where applications for a new license or request for approval of a relocation of the licensed premises in the following circumstances includes one of the following circumstances in areas of the borough outside cities:
 - a. There is insufficient ingress and egress for traffic to the premises; or
 - b. The location of the premises would unduly interfere with the flow of traffic; or
 - c. The public entrance of the licensed premises would be within 500 feet [BY STRAIGHT LINE MEASUREMENT FROM THE PROPERTY LINE] of an established school, [OR] church building in which religious services are regularly conducted, or the outer boundaries of a playground, measured by the shortest pedestrian route from the outer boundaries of the school ground or playground or the public entrance of the church building; or
 - d. The existence or location of the premises would unduly interfere with or impact school operations; or
 - e. The existence or location of the premises is inconsistent with surrounding property uses; or
 - f. Any other facts are presented that render the particular application objectionable to the assembly.

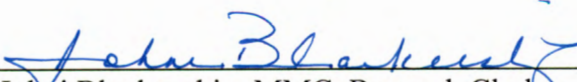
- B. The assembly shall not cause a protest to be filed with the State Alcoholic Beverage Control Board for the continued operation of a license for the second year of the biennial license period, or on the application submitted for a renewal by the same licensee of the license for the sale of alcoholic beverages within the borough where the location of the licenses premises remains the same, unless the applicant falls under Sections 7.10.020(A)(1) or 7.10.020(A)(2)(f).
- C. Notwithstanding the provisions of this section, the borough is not required to file a protest if the transferor and/or applicant have made satisfactory arrangements with the borough for the discharge of a tax obligation from the proceeds of the transfer or by payment from the person to whom the license is to be transferred. Further, if the proposed transferee holds a security interest in the license or licensed premises and seeks the transfer as part of an action foreclosing or protecting that security interest the borough will not protest a transfer to the holder of the security interest so long as satisfactory arrangements have been made by the transferee to pay the delinquent taxes in accordance with this chapter and other provisions of the borough code and no other provisions of this chapter would cause or allow a protest to be made.
- D. Notwithstanding the provisions of KPB 7.10.020(A)(2)(c), the assembly will not file a protest based on distance between property lines of less than 500 feet, if after request by the applicant and after a hearing it determines (1) that the governing or supervisory authority for the church, school or playground consents to the licensed location being closer than allowed by KPB 7.10.020(A)(2)(c); and (2) that locating the premises within that distance would not unduly impact or interfere with access, the flow of traffic, or the operations of the school, church, or playground. In the absence of such determination or consent, the protest shall be filed as required by this section.

SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF FEBRUARY, 2015.


Blaine Gilman, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bagley, Dunne, Holmdahl, Knopp, Ogle

No: Cooper, Gilman, Johnson, Welles

Absent: None