

Introduced by: Ogle
Date: 05/15/18
Hearing: 06/19/18
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2018-23**

**AN ORDINANCE AMENDING KPB 7.20 AND KPB 7.30 REGARDING BOROUGH
COMMENTS ON STATE MARIJUANA LICENSES**

WHEREAS, KPB 7.20 and KPB 7.30 set forth the processes for the Kenai Peninsula Borough (“borough”) to comment to the State of Alaska on marijuana licenses within the borough; and

WHEREAS, pursuant to 3 AAC 306.035 all annual renewals for marijuana licenses are due by June 30;

WHEREAS, if there has been no change in the status of the location of a marijuana license at time of renewal, hearings before the planning commission and assembly are unnecessary; and

WHEREAS, several provisions of KPB 7.20 and KPB 7.30 should be clarified now that the borough has worked with the ordinance for two years; and

WHEREAS, the planning commission reviewed this ordinance at its May 29, 2018 meeting and recommended approval by unanimous consent; and

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

SECTION 1. That KPB 7.20.010 shall be amended, as follows:

7.20.010. Local Regulatory Authority.

- A. The Kenai Peninsula Borough Assembly is the local regulatory authority for regulation of local marijuana establishments in the area of the borough outside of the cities under AS [CHAPTER] 17.38 and any implementing regulations.
- B. The assembly is authorized to comment to the State of Alaska Marijuana Control Board on marijuana establishment license applications within the Kenai Peninsula Borough consistent with the standards set forth in AS 17.38, 3 AAC 306, and KPB 7.30. A public hearing shall be held by the assembly prior to submitting the borough's comments on a license application [, TRANSFER,] or relocation [~~OR RENEWAL~~] to the State of

Alaska. License renewals and transfers shall be processed pursuant to KPB 7.30.010(D).

- C. The planning commission, consistent with AS 29.40 and KPB 21.01.010, shall make recommendations to the borough assembly regarding land use regulation of commercial marijuana facilities as defined by AS 17.38 and administer and implement any land use regulations adopted by the borough assembly.

SECTION 2. That KPB 7.30.010 shall be amended, as follows:

7.30.010. [~~ASSEMBLY REVIEW~~] Applications—Renewals—Hearings—Action.

- A. The assembly shall review and make recommendations to the state on applications submitted to the State Marijuana Control Board for marijuana establishment licenses [~~, OR THE RENEWAL OF A LICENSE,~~] within the borough in the following situations:
 - 1. Applications for a new license; or
 - 2. Applications requesting approval of a relocation of the licensed premises [~~]; OR~~
 - 3. APPLICATIONS REQUESTING THE RENEWAL OF A LICENSE; OR
 - 4. APPLICATIONS REQUESTING APPROVAL OF A TRANSFER OF A LICENSE TO ANOTHER PERSON].
- B. Prior to the assembly making a recommendation to the Marijuana Control Board the planning commission shall hold a public hearing and make a recommendation to the assembly on the license application applying the standards set forth in KPB 7.30.020. The planning department shall prepare a staff report for the planning commission addressing items set forth in KPB 7.30.020. Notice of the public hearing shall be given in accord with the provisions of KPB 21.11.
- C. After assembly public hearing, review and action as provided in KPB 7.30.010(A) and 7.30.020, the borough clerk shall provide a letter to the State of Alaska Marijuana Control Board informing it of the assembly's non-objection, protest, or recommended conditional approval as appropriate.
- D. Applications requesting renewal of a license or transfer of ownership shall be reviewed by the finance department and planning department for continued compliance. If the facility, licensee and licensee's affiliates are in compliance with KPB 17.30.020 the borough clerk shall provide a letter of non-objection to the State of Alaska Marijuana Control Board. If the

facility, licensee or affiliate is non-compliant with KPB 7.30.020, the process in KPB 7.30.010(B)(C) shall be followed.

SECTION 3. That KPB 7.30.020 shall be amended, as follows:

7.30.020. Assembly review—Standards.

- A. The assembly shall cause a protest to be filed with the State of Alaska Marijuana Control Board on any application submitted for a new marijuana license, 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 application for renewal of a license, within the borough, in the following situations:
1. Where borough records indicate that the applicant, applicant's affiliates and/or transferor is in violation of the borough sales, and/or personal and real property tax ordinances and regulations, has any unpaid balance due on tax accounts for which the applicant and/or transferor is liable or has failed to comply with any of the filing, reporting or payment provisions of the borough ordinances or regulations. A protest shall not be filed for balances due secured by a payment agreement authorized by borough ordinances, as long as:
 - a. The applicant, applicant's affiliates 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, applicant's affiliates or transferor is involved in no more than two payment agreements within the prior five (5) years.
 - d. Notwithstanding the provisions of this subsection, the borough is not required to file a protest if the transferor and/or applicant or applicant's affiliates 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.

...

C. Marijuana establishments shall:

1. Be located where there is sufficient ingress and egress for traffic to the parcel including:
 - a. Except for limited cultivation facilities [T]the approach shall be constructed to a minimum of [28] 24 feet in width where it accesses a borough right-of-way;

...

SECTION 4: That KPB 7.30.900 shall be amended, as follows:

7.30.900. Definitions.

Unless the context requires otherwise, the following definitions apply:

Affiliate means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, a partnership, limited liability company, or corporation subject to AS 17.38 and 3 AAC 306.

Marijuana has the meaning given in Alaska Statute 17.38.900.

Marijuana cultivation facility means an entity registered to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store as defined in AS 17.38.

Marijuana product manufacturing facility means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Marijuana testing facility means an entity registered to analyze and certify the safety and potency of marijuana.

Recreation or Youth Center means a building, structure, athletic playing field, or playground:

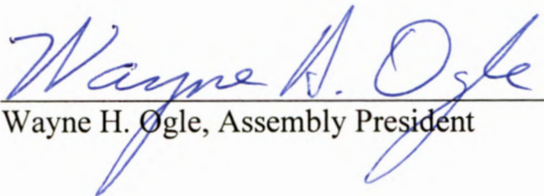
- (A) Run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors; or
- (B) Operated by a public or private organization licensed to provide shelter, training, or guidance for persons under 21 years of age.

Registered means issued a registration or license by the State of Alaska.

Retail marijuana store means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

SECTION 5 That this ordinance shall become effective retroactively on June 2, 2018.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF JUNE, 2018.


Wayne H. Ogle, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk

Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
No: None
Absent: None