

## **E. NEW BUSINESS**

- 6. Ordinance 2022-XX: Amending KPB Chapters 7.20 & 21.44 Relating to Marijuana Establishments & Processing Application for Marijuana Establishments.**

# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

**TO:** Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor

**FROM:** Robert Ruffner, Planning Director

**DATE:** June 23, 2022

**RE:** Ordinance 2022-\_\_\_\_, Amending KPB Chapters 7.20 and 21.44 Relating to Marijuana Establishments and Processing Applications for Marijuana Establishments (Mayor)

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After six years, it has become apparent that Planning Commission review and comment is an unnecessary additional regulatory step. This ordinance amends KPB 7.20.010 by removing the Planning Commission from the application process for marijuana establishment license applications. It will result in the consistent treatment of the public review process for both marijuana and alcohol establishments because KPB 7.10.010 does not require the Planning Commission to make recommendations to the Assembly regarding liquor license applications and renewals.

Under 7.20.010 and AS 17.38, the Assembly is the regulatory authority for regulation of local marijuana establishments outside of the cities. It is duplicative to have the Planning Commission hold public hearings on applications for marijuana establishment license applications and also have the Assembly hold a public hearing on the same application when, ultimately, the Assembly is the body that provides a nonbinding recommendation to the Marijuana Control Board. This ordinance still requires a Planning Department report to ensure the application complies with all local ordinances and the Planning Department to present its report to the Assembly during a public hearing.

Additionally, KPB 7.20.010(C) and KPB 21.44.130(F) cite AS 17.38 for a definition for "commercial marijuana facilities", and KPB 21.44.190(D) cites AS 17.38 for a definition for "commercial marijuana establishments". But, AS 17.38 does not provide a definition for either "commercial marijuana facilities" or "commercial marijuana establishments". Instead, the appropriate term actually defined in AS 17.38 is "marijuana establishment", which encompasses marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and retail marijuana stores. As such, this ordinance will align Borough code with state law.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor  
Date: 07/05/22  
Hearing: 08/09/22  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-**

**AN ORDINANCE AMENDING KPB CHAPTERS 7.20, 7.30 AND 21.44 RELATING TO  
MARIJUANA ESTABLISHMENTS AND PROCESSING APPLICATIONS FOR  
MARIJUANA ESTABLISHMENTS.**

**WHEREAS**, under KPB 7.20.010 and Alaska Statute (“AS”) 17.38, the Kenai Peninsula Borough Assembly (Assembly) is the regulatory authority for regulation of local marijuana establishments outside of the cities; and

**WHEREAS**, the Assembly is empowered to comment to the State of Alaska Marijuana Control Board on marijuana establishment applications within the Kenai Peninsula Borough (Borough) consistent with standards set forth in state law and regulation, and Borough code; and

**WHEREAS**, the Borough code does not require the Planning Commission to make recommendations to the Assembly regarding liquor license applications and renewals; and

**WHEREAS**, AS 17.38 does not define “commercial marijuana facilities” nor “commercial marijuana establishments”, but does define “marijuana establishments”;

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

**SECTION 1.** KPB 7.20.010 is hereby 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 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 or relocation to the

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

- C. The planning [COMMISSION] department [, CONSISTENT WITH AS 29.40 AND KPB 21.01.010, SHALL] will make recommendations to the [BOROUGH] assembly regarding land use regulation of [COMMERCIAL MARIJUANA FACILITIES] marijuana establishments 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 is hereby amended, as follows:

**7.30.010. - 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 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.
- B. Prior to the assembly making a recommendation to the Marijuana Control Board the [PLANNING COMMISSION SHALL] assembly must 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] will prepare a staff report for the [PLANNING COMMISSION] assembly 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] will 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) and (C) shall be followed.

**SECTION 3.** That KPB 21.44.130 is hereby amended, as follows:

**21.44.130. Home occupations.**

- A. *Purpose.* It is the purpose of this section to promote peace, quiet, and domestic tranquility within residential LOZDs, and to limit excessive noise, excessive traffic, diminished property values, fire hazard, threats to safety and health, and other possible negative effects of commercial uses conducted in residential areas.
- B. *Application.* A single home occupation may be operated on a lot in R-1, R-2, R-R, R-W, and R-M zones subject to the provisions of this section without a permit:
- C. *Standards.*
  - 1. The outside appearance of a building or parcel shall not change so that it detracts from the dwelling's and parcel's principal use as a residence.
  - 2. The home occupation shall not generate traffic, parking, sewage or water use in excess of what is normal in a residential subdivision. There may be no more than twenty vehicle trips per day of combined residential and home occupation traffic.
  - 3. The home occupation shall not create a hazard to person or property, or become a nuisance.
  - 4. One permanent sign no greater than 16 square feet may be used to advertise a home occupation. Signs may not be illuminated.
  - 5. Retail sales of goods which generate traffic of customers, deliveries, or suppliers to the parcel are not allowed on the parcel, except where the sale of goods is incidental to the service provided by the home occupation.
  - 6. The use of a dwelling unit for home occupations shall be conducted solely within the confines of the main dwelling and accessory buildings, and shall be clearly incidental and subordinate to the main use of the dwelling as a residence. In-home adult or child care, or preschools may use outdoor space on the lot as long as the area used for the home occupation is fenced for the safety of persons on the premises as a result of the home occupation.
  - 7. The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes are not allowed on the premises, except for fuel storage of 55 gallons.
  - 8. There shall not be outside storage or display of any kind that is visible from the street or neighboring property other than personal or seasonal decorations.
  - 9. No commercial outdoor storage or outdoor loading of vehicles related to the home occupation shall be allowed, except that one operational work trailer, and one operational and registered work vehicle may park on the

property. Licensed fishing guide operations are limited to two boats for the business per lot, each not exceeding 28 feet in length.

10. No on street parking shall be allowed or necessary to conduct the home occupation.
  11. The home occupation shall be conducted by the inhabitants of the principal permitted dwelling, and no more than one nonresident employee shall be permitted to work on site.
  12. All operators of home occupations are required to meet applicable registration requirements to collect borough sales tax as set for in KPB chapter 5.18.
- D. *Conditions.* All standards set forth in KPB 21.44.130 must be met on a continuing basis and are mandatory to operate a home occupation.
- E. Home occupations allowed in the R-1, R-R, R-W, and R-M districts may include but are not limited to: accountant/bookkeeping services; beauty parlor or salon/barber shop; computer programming, software instruction, web page development, and related computer services; consulting services; dressmaking, sewing, and tailoring; event planning services; in-home adult or child care, or preschool; home cooking and preserving; home crafts, such as model making, needlework, and rug weaving; photography studio; painting, sculpting, writing or other fine arts related crafts; telephone answering, telecommuting, secretarial and administrative services; tutoring and musical instruction.
- F. *Home occupations not allowed in the R-1, R-2, R-R, R-W, and R-M districts.* The following occupations are prohibited as home occupations: service, repair or painting of any vehicle; kennels; sexually oriented businesses; commercial composting; sale, repackaging or use of hazardous materials; retail sales unless clearly incidental and necessary to the service being provided by the home occupation; [COMMERCIAL] marijuana [FACILITIES] establishments as defined in AS 17.38, restaurants, alcoholic beverage premises licensed under title 4 of the Alaska statutes and other similar uses which are inconsistent with the purpose statement of KPB 21.44.010.
- G. Violation of the home occupation provisions of this section shall be processed in accord with the provisions of KPB 21.50. Each day a violation continues is a separate violation.

**SECTION 4.** That KPB 21.44.190 is hereby amended, as follows:

**21.44.190. - Mixed use district (C-3).**

- A. *Allowed Principal Uses:* Commercial, business, residential, institutional and public uses are allowed in this district. Industrial uses are prohibited in a C-3 LOZD.

- B. *Allowed Compatible Uses:* Compatible uses allowed in the C-3 zone are uses allowed in R-1 and R-M districts.
- C. *Development Standards.* Development standards apply to principal and accessory structures.
  - 1. *Setbacks.* Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore and where applicable subject to the provisions of KPB 21.18.
  - 2. *Lot size.* Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
  - 3. *Drainage ways.* Existing natural drainage ways shall be retained.
  - 4. *Coverage.* Maximum coverage by structures is 20 percent of the lot.
- D. *Prohibited Uses.* The following uses are prohibited in C-3 LOZDs: [COMMERCIAL] marijuana establishments licensed under AS 17.38 and applicable regulations, alcoholic beverage premises licensed under Title 4 of the Alaska statutes, and sexually oriented business establishments.

**SECTION 5.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \* 2022.**

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Brent Johnson, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk