

Introduced by: Mayor, Ogle, Gilman
Substitute Introduced: 02/23/16
O2016-07 (Mayor, Ogle, Gilman): See Original for Prior History
Hearing: 02/23/16
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-07
(MAYOR, OGLE, GILMAN) SUBSTITUTE**

**AN ORDINANCE AMENDING KPB CHAPTER 7.20 AND ENACTING KPB CHAPTER
7.30 REGARDING LOCAL PROTESTS OF STATE MARIJUANA LICENSES**

WHEREAS, during the November 4, 2014 general election, Alaska voters approved initiative Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana, which provided for the State development of regulations and requirements for commercial marijuana establishments, and legalized possession and personal use of marijuana by persons 21 years of age or older; and

WHEREAS, Ballot Measure 2 allows municipalities in the State, including the borough, to prohibit and/or implement regulations governing the number, time, place and manner of marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and retail marijuana stores (marijuana establishments); and

WHEREAS, KPB Resolution 2015-013, adopted March 17, 2015, established the Marijuana Task Force for the purpose of researching, advising, and making recommendations to the borough assembly; and

WHEREAS, the KPB Marijuana Task Force received a memorandum dated July 28, 2015, from Kenai Peninsula Borough Mayor Mike Navarre instructing the Task Force to primarily focus on potential borough regulation of the marijuana industry, if any; and

WHEREAS, the United States Department of Justice has issued guidance (the "Cole" memoranda dated February 14, 2014, and August 29, 2013) describing marijuana-related federal enforcement priorities, including "Preventing the distribution of marijuana to minors" and "Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;" and

WHEREAS, the Marijuana Task Force, finds that the goal of protecting the public health, safety, and welfare is furthered by preventing the distribution of marijuana to minors and preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; and

WHEREAS, pursuant to KPB 2.56.006, the document entitled “2005 Kenai Peninsula Borough Comprehensive Plan” has been adopted as the borough’s comprehensive plan; and

WHEREAS, the 2005 Kenai Peninsula Borough Comprehensive Plan identified in Goal 6.6 the goal to reduce conflicts arising from incompatible land uses outside of incorporated cities; and

WHEREAS, the Marijuana Task Force supported certain standards and conditions for marijuana establishments at its January 20, 2016, meeting; and

WHEREAS, a borough process addressing marijuana establishments should complement the state licensing process rather than duplicate it;

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

SECTION 1. That KPB 7.20.010(B) is hereby amended as follows:

7.20.010 Local Regulatory Authority.

...
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, [AND] 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, relocation or renewal to the State of Alaska.
...

SECTION 2. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter to be numbered KPB 7.30 which shall read as follows:

CHAPTER 7.30. - MARIJUANA LICENSE PROTESTS

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 KP.B 7.30.020. The planning department shall prepare a staff report for the planning commission addressing items set forth in KP.B 7.30.020. Notice of the public hearing shall be given in accord with the provisions of KP.B 21.11.
 - C. After assembly public hearing, review and action as provided in KP.B 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.

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 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 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.
 - d. Notwithstanding the provisions of this subsection, 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.

B. Marijuana establishments shall not:

1. be located within 1,000 feet of any school. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer parcel boundaries of the school.
2. be located within 500 feet of a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility. The distance specified in this subsection must be measured by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the recreation or youth center, or the main public entrance of the building in which religious services are regularly conducted, or the correctional facility.
3. be located within a local option zoning district.

C. Marijuana establishments shall:

1. be located where there is sufficient ingress and egress for traffic to the parcel including
 - a. The approach shall be constructed to a minimum of 28 feet in width where it accesses a borough right-of-way;
 - b. There shall be no parking in borough rights-of-way generated by the marijuana establishment;
 - c. The site development shall delineate a clear route for delivery vehicles which shall allow vehicles to turn safely;
 - d. on-site parking and loading areas shall be designed to preclude vehicles from backing out into the roadway; and
2. not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m. each day; and
3. be current in all Kenai Peninsula Borough obligations consistent with KPB 7.30.020(A); and
4. maintain a state license issued pursuant to AS 17.38 and 3 AAC 306.

D. Applicant is responsible for complying with all federal, state and local laws applicable to marijuana. By issuing a recommendation to the Marijuana

Control Board the borough is not authorizing the violation of local, state, or federal law.

- E. The assembly may recommend conditions on a license to meet the following standards: protection against damage to adjacent properties, offsite odors, noise, visual impacts, road damage, and criminal activity, and protection of public safety.

7.30.900. Definitions.

Unless the context requires otherwise, the following definitions apply:

"*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.

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

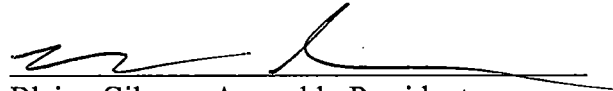
"*Retail marijuana store*" means an entity registered to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

"*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.

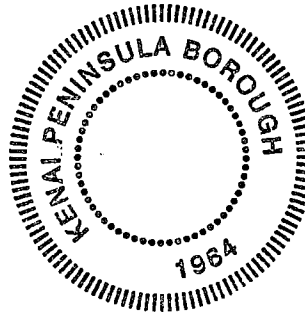
SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 23RD DAY OF FEBRUARY, 2016.


Blaine Gilman, Assembly President

ATTEST:


Johni Blankenship, MMC, Borough Clerk



Yes: Bagley, Dunne, Holmdahl, Johnson, Knopp, Ogle, Welles, Gilman
No: None
Absent: None