

Introduced by: Cox
Date: 10/26/21
Hearing: 12/07/21
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-38**

AN ORDINANCE AMENDING KPB TITLE 7 REGARDING ALCOHOL AND MARIJUANA REGULATIONS TO REQUIRE APPLICANT COMPLIANCE WITH FORM FILING REQUIREMENTS UNDER ALASKA LAW, ADD THREE ITEMS UNDER APPLICANT STANDARDS FOR REVIEW, AND TO DEFINE THE TERM APPLICANT

WHEREAS, Title 7 of the KPB Code of Ordinances deals with liquor license and marijuana license applications; and

WHEREAS, KPB Chapter 7.10 is specific to the Kenai Peninsula Borough (“Borough”) processes and regulations related to alcohol applications filed with the State Alcohol & Marijuana Control Office (“AMCO”) and transmitted to the Borough for a protest, approval, or conditional approval determination; and

WHEREAS, KPB Chapter 30 is specific Borough processes and regulations related to marijuana applications filed with AMCO and transmitted to the Borough for a protest, approval, or conditional approval determination; and

WHEREAS, both KPB 7.10.020 and 7.20.030 indicate that where the “applicant” is in violation of 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 will be filed; and

WHEREAS, Title 7 does not define the term “applicant”; and

WHEREAS, the lack of definition has led to confusion about whether the applicant is the new business entity or whether the applicant also includes the officers and owners of the establishment; and

WHEREAS, business owners who are delinquent in their obligations to the Borough should be responsible for their debts and not held harmless simply because they choose to do business under a different business name or entity; and

WHEREAS, sales taxes collected by a business are monies belonging to the people and are held in trust for the education of our KPB children, and for the cities within the Borough; and

WHEREAS, collected sales taxes is not to be used as personal income or operating income for a business; and

WHEREAS, applicant should be defined to include all of those responsible within the business to ensure that the officers and owners, or people responsible, are not individuals who already owe the Borough monies and have simply formed a new business entity; and

WHEREAS, Alaska Statutes, as a condition to operating a legal business in the state, require that a business submit and update certain forms as required under AS 10.06; and

WHEREAS, it is reasonable for the Borough to expect any business entity within the Borough to be in compliance with forms required under state law and maintained by the state's publicly available online database;

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

SECTION 1. That KPB Section 7.10.020 is hereby amended to add a new subsection (E) and new subsection (F), as follows:

7.10.020. Assembly protest.

- E. The assembly may cause a protest to be filed with the State Alcoholic Control Board where the information on the application does not align with current information available on the entity database maintained by the State of Alaska or where the entity is not in compliance with forms required by Alaska Statutes. The entity name, officer names and owner names listed on the application submitted shall match those listed on the entity database maintained by the State of Alaska, Division of Corporations, Business and Professional Licensing public database and as required by Alaska Statutes under AS 10.06, as amended.
- F. For purposes of KPB 7.10, the term "applicant" shall have the same meaning as set forth in KPB 7.30.900.

SECTION 2. That KPB Section 7.30.020(C) is hereby amended as follows:

7.30.020. Assembly review - Standards.

- 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 the approach shall be constructed to a minimum of 24 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[.]; and
 5. Have a current State of Alaska business license issued pursuant to AS 43.70.020; and
 6. Ensure corporate officer information is up to date on the State of Alaska Division of Corporations, Business and Professional Licensing public database; and
 7. File an application for a certificate of registration with the borough pursuant to KPB 5.18.300.

SECTION 3. That KPB Section 7.30.900 is hereby 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].

Applicant means the business entity and shall include any and all persons that are officers or have any ownership, partnership, membership, or other financial interest in the business entity itself or that of any additional entity listed as an owner of the applying business entity.

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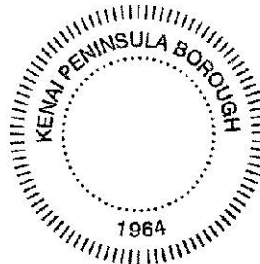
SECTION 4. That this ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF DECEMBER, 2021.


Brent Johnson, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
No: None
Absent: None