



## **KENAI PENINSULA BOROUGH**

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**MIKE NAVARRE  
BOROUGH MAYOR**

**TO:** KPB Assembly Member

**THRU:** Mayor Mike Navarre

**FROM:** Marijuana Task Force Chair, Leif Abel *R.O. for L.A.*  
Marijuana Task Force Members

**DATE:** February 2, 2016

**RE:** Quarterly report for the period of August 18, 2015 through January 20, 2016

I would like to thank Mayor Navarre and the esteemed members of the Kenai Peninsula Borough Assembly for allowing me to present our recommendations tonight.

### **Introduction:**

Created by the Assembly and Mayor through Resolution 2015-013 the Marijuana Task Force (Task Force or MTF) was formed on March 17, 2015.

Appointed by the Mayor, the Task Force is comprised of the following individuals: Vice Chair Paul Ostrander, Blaine Gilman, Ron Long, Chief Peter Mlynarik, Dave Nunley, Dollynda Phelps, Wayne Ogle, Marc Theiler and myself as Chair.

We have been graced with the assistance of the following staff: Borough Clerk Johni Blankenship, Deputy Borough Attorney Holly Montague, and Borough Planner Bruce Wall.

### **Task Force Directive:**

The Task Force was directed to submit quarterly reports to the administration and assembly which include:

- (A) a summary of legislative and administrative actions taken by the State of Alaska and other municipalities of the State;
- (B) how the borough should comment to the State of Alaska regarding the implementation of Alaska Statute Chapter 17.38;
- (C) how the borough should implement AS Chapter 17.38 at the local level; and
- (D) recommendations on taking any actions similar to those taken by other municipalities.

The Task Force was also given the option of providing informal updates between quarterly reports in response to assembly or administration requests, or as deemed appropriate by the Task Force.

### **Implementation Plan:**

The Marijuana Task Force has developed a comprehensive plan for the implementation of a safe and regulated cannabis industry on the Kenai Peninsula, within the borough. The plan was built after considering countless hours of research by members and staff and significant input from the public. It is a compilation of ideas from Task Force members that is representative of our diverse population. The plan is not whole without three elements. In the unanimous opinion of the Task Force the following elements are needed to create a working system that provides an opportunity for public input during the permitting process while adequately protecting business owners:

- **Permitting Requirements** – These are included in a proposed amendment to KPB chapter 21 and require that an application be submitted to the Planning Department for any marijuana establishment that has applied for a license from the State of Alaska. The full recommendation is attached for your reference.
- **Designation of the Planning Commission as the local regulatory authority** – AS 17.38.210, Marijuana Establishment Regulations, provides that a local government may designate a local regulatory authority responsible for processing applications submitted to operate marijuana establishments within the boundaries of the local government. The Marijuana Task Force feels that the Planning Commission is the most appropriate body for this role. They will allow public testimony, and assure that the application meets all borough permitting requirements and that the applicant is compliant with borough tax ordinances and regulations.
- **Local Option Zoning** - The Marijuana Task Force feels that an important component of a comprehensive approach to the local regulation of marijuana should include a mechanism whereby residents have the ability to limit marijuana establishments in their neighborhoods. The current Local Option Zoning ordinance being considered by the assembly provides this mechanism and is supported by the Task Force.

### **Additional Task Force Recommendations**

1. At our meeting of August 17, 2015, The Task force passed a motion recommending that the Assembly, at this time, not prohibit Marijuana Cultivation, Marijuana Manufacturing, Marijuana Testing, or Marijuana Retail Facilities as outlined in Proposition 2.
2. At our meeting of September 29, 2015, The Task Force passed a motion recommending that the Assembly, through the enactment of an ordinance, prohibit the processing of hash oil using a flammable extraction method in non-licensed facilities within the borough.

### **Where we are now:**

The state will start accepting license applications on February 24<sup>th</sup> and likely issue the first licenses to marijuana establishments in late May of 2016.

At this time the MTF has not scheduled a further meeting. If concerns or conditions arise that require consideration Chair Abel will call a meeting. Any Task Force member may contact the Chair and ask that this be done. We continue to ask for public input regarding marijuana in the borough from all stakeholders. We will also continue to educate ourselves and monitor the progress of local implementation of Ballot Measure Two.

**MARIJUANA TASK FORCE RECOMMENDATION  
TO KENAI PENINSULA BOROUGH ASSEMBLY REGARDING  
PERMIT REQUIREMENTS AND STANDARDS FOR MARIJUANA ESTABLISHMENTS**

- 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,** KPB 21.04.010 designates all areas in the Borough but outside the city limits as the Rural District, and that Land use in the rural district shall be unrestricted except as otherwise provided in that title; and
- WHEREAS,** KPB 21.25.020 indicates it is the purpose of KPB 21.25 to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights; and
- WHEREAS,** pursuant to the 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 (Goal 6.6) the goal to reduce conflicts arising from incompatible land uses outside of incorporated cities;

NOW, THEREFORE, the Kenai Peninsula Borough Marijuana Task Force (MTF) recommends the Kenai Peninsula Borough Assembly enact an ordinance amending KPB Title 21 to include Permit Requirements and Standards for Marijuana Establishments. The MTF recommends the ordinance contain following:

**SECTION 1. Additional Definitions to be added to: KPB 21.25.030. - Definitions.**

"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.

"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 2. Amendment of KPB 21.25.040(A) – Permit required for commencement of certain land uses.**

A. It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance:

1. correctional community residential center (CCRC) pursuant to KPB 21.27;
2. commercial sand, gravel or material site pursuant to KPB 21.26;
3. concentrated animal feeding operation (CAFO); and
4. marijuana establishment pursuant to KPB 21.XX.

**SECTION 3. Adoption of new chapter 21.XX – Marijuana Establishment Permits and Standards.**

21.XX.010. – Marijuana establishments requiring a permit.

- A. A permit, issued by the Planning Director, is required for all marijuana establishments. A permit is valid for a period of five years or until the permittee's marijuana establishment is no longer licensed by the State, whichever occurs first. The provisions of KPB Chapter 21.25 are applicable to marijuana establishments, and the provisions of KPB 21.25 and 21.XX are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.XX, the provisions of KPB 21.XX are controlling.
- B. The Kenai Peninsula Borough shall approve or deny a marijuana permit application no later than 60 days from receipt of notification from the Marijuana Control Board director that the applicant has submitted an application to the state.

21.XX.020. – Application procedure.

- A. In order to obtain a permit, an applicant shall first complete and submit to the borough planning department an application, along with the fee listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. The application shall include the following items:
1. Legal description of the parcel and KPB tax parcel ID number;
  2. Identification of all local option zoning districts or any encumbrances (including, but not limited to easements) affecting the parcel;
  3. Site plan of sufficient detail for the Planning Department to determine existing and proposed structures, building entrances, proposed security fencing, if any, and points of ingress and egress for traffic to the parcel;
  4. The type of marijuana establishment for which the permit is sought;
  5. Proof that the applicant has submitted a License application to the State of Alaska for the corresponding type of marijuana establishment. Copies of materials submitted with

the application to the State, where they address items 1 through 4 above, may be used to satisfy the requirements of this section;

6. An area map drawn to scale indicating any of the land uses or structures listed at 3 AAC. 306.010 or KPB 21.XX.040(A)(1)(a) on other properties within a one thousand (1000) foot proximity of the parcel upon which the applicant is seeking a permit; and

7. Any volunteered permit conditions the applicant proposes. Failure to include a volunteered permit condition in the application does not preclude the applicant from proposing or agreeing to additional permit conditions at a later time.

21.XX.030. – Standards for marijuana establishments.

A. These regulations are in addition to State regulations and requirements, and are intended to protect against damage to adjacent properties, offsite odors, noise and visual impacts, road damage, and criminal activity. Only the conditions set forth in KPB 21.XX.040 may be imposed to meet these standards.

21.XX.040. - Permit conditions.

A. The following mandatory conditions apply to permits issued for marijuana establishments:

1. Marijuana establishments shall not:

a. be located within one thousand (1000) 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.

b. 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.

2. Marijuana establishments shall:

a. be located where there is sufficient ingress and egress for traffic to the parcel; and

3. Hours. Retail Marijuana stores shall 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.

B. Other permits. Permittee is responsible for complying with all federal, state and local laws applicable to marijuana. By issuing a permit, the Borough is not authorizing the violation of local, state, or federal law.

C. Volunteered permit conditions. Additional conditions may be included in the permit upon agreement of the permittee and approval of the Planning Director. Such conditions must be

consistent with the objectives set forth in KPB 21.XX.030(A).The Planning Director's approval of such conditions shall be contingent upon a written conclusion, based on stated findings of fact, that the conditions will be in the best interest of the borough. Volunteered permit conditions apply to the subject parcel and operation, regardless of a change in ownership. A change in volunteered permit conditions may be proposed at permit renewal or amendment.

21.XX.050. - Permit extension and revocation.

- A. Permittees must submit a request in writing for permit extension every five years after the permit is issued. Requests for permit extension must be made at least 30 days prior to permit expiration.
- B. A permit extension certificate may be granted by the planning director after 5 years where no modification to operations or conditions are proposed.
- C. A permit extension may be denied if: (1) the permittee is otherwise in noncompliance with the original permit conditions; or (2) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests.
- D. A modification application shall be treated as a new application.
- E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.XX.060(D) will be the same as an original permit application in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- F. Failure to submit a request for extension will result in the expiration of the permit. The borough may issue a permit termination document upon expiration. Once a permit has expired, a new permit application approval process is required in order to operate the marijuana establishment.
- G. Permits may be revoked pursuant to KPB 21.50, Violations and Enforcement.

21.XX.060. – Permit modifications.

If a permittee revises or intends to revise operations (at a time other than permit extension) so that they are no longer consistent with the original application, a permit modification is required. The planning director shall determine whether the revision to operations requires a modification. Permit modification shall be processed in the same manner as original permits.

21.XX.070. - Violations.

- A. Violations of this chapter shall be governed by KPB 21.50.

21.XX.080. – Appeals.

- A. Appeals of the Planning Director's decisions and findings in regard to this title are subject to appeal to the Planning Commission, as described at KPB 21.20.030 and 21.20.060. The

Commission's decision may be further appealed to the Board of Adjustment as described at  
KPB 21.20.200-360.





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**MIKE NAVARRE  
BOROUGH MAYOR**

### **MEMORANDUM**

TO: KPB Assembly Members

THRU: Mayor Mike Navarre

FROM: Marijuana Task Force Chair, Leif Abel *P.O. via L.A.*  
Marijuana Task Force Members

DATE: February 2, 2016

RE: Recommendation regarding Ordinance 2016-03

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At its January 20, 2016 meeting, the Marijuana Task Force discussed the above reference ordinance and unanimously agreed to the following statement:

“The Marijuana Task Force feels that an important component of a comprehensive approach to the local regulation of marijuana should include a mechanism whereby residents have the ability to limit marijuana establishments in their neighborhoods. The current Local Option Zoning ordinance being considered by the assembly provides this mechanism and is supported by the Task Force.”