



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Mike Navarre, Borough Mayor

FROM: Max Best, Planning Director 

DATE: February 1, 2016

SUBJECT: Ordinance 2015-27; An Ordinance Amending KPB 7.10.20 to Reduce the Minimum Distance Between a liquor licensed Premise and an Established School, Church or Playground from 500 Feet to 300 Feet, and Changing the Method of Measuring the Distance to Match State Statute

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled January 25, 2016 meeting.

A motion to recommend adoption of Ordinance 2015-27 failed by a tie vote.
(*Carluccio, No; Collins, Absent; Ecklund, No; Ernst, Yes; Foster, No; Glendening, No; Holsten, Absent; Isham, Yes; Lockwood, No; Martin, Yes; Ruffner, Yes; Venuti, Recused; Whitney, Yes*)

An amendment motion failed by a tie vote to retain the minimum distance of 500 feet between liquor licensed premise and an established school, church or playground and supports the method of measuring the distance to match State statute. (*Carluccio, Yes; Collins, Absent; Ecklund, Yes; Ernst, Yes; Foster, Yes; Glendening, No; Holsten, Absent; Isham, No; Lockwood, No; Martin, Yes; Ruffner, No; Venuti, Recused; Whitney, No*)

Attached are the unapproved minutes of the subject portion of the meeting.

AGENDA ITEM F. PUBLIC HEARINGS

4. Ordinance 2015-27; An Ordinance Amending KPB 7.10.20 to Reduce the Minimum Distance Between a liquor licensed Premise and an Established School, Church or Playground from 500 Feet to 300 Feet, and Changing the Method of Measuring the Distance to Match State Statute

Memorandum & Staff Report given by Max Best

PC Meeting: 1/4/2016

This item was postponed from the January 4, 2016 Planning Commission meeting. There has been no additional information received.

Staff Recommends opening the public hearing, take testimony, close the public hearing and forward a recommendation to the Assembly.

Following is the memorandum that was included in the packet.

During a recent assembly consideration of a liquor license relocation application, it became apparent that the borough's code section requiring a protest when a proposed location is less than 500 feet from a church, school, or playground was creating serious division in an unincorporated community of the borough. In most small communities in the borough, businesses are concentrated in a very small area that also includes religious and educational uses. State law only prohibits liquor premises from being within 200 feet of churches and schools. Almost all of the other communities in the state that allow the sale of liquor use this same 200 foot distance requirement. The only known exceptions are Valdez which also used 500 feet and Bethel at 300 feet.

This ordinance would decrease the 500 feet distance to 300 feet to reduce the borough's role in causing such conflicts while still imposing a greater distance requirement than state law. It also changes the way the distance is measured to be consistent with the state's method of measuring this distance. This change would also simplify the application process as the distance would only have to be measured one way.

END OF MEMORANDUM

Chairman Martin opened the meeting for public comment.

1. Debbie Cary, PO Box 39317, Ninilchik

Ms. Cary thanked the Commission for allowing her to speak at the meeting. She felt that the ordinance to reduce the footage from the current required distance of 500 to 300 feet was not in the best interest of the Kenai Peninsula Borough and the residents of the Borough.

Ms. Cary has owned a bar, liquor store and restaurant in Ninilchik for the past 25 years. This seems to be the only thing people think of when she talks but in truth she was also a CERT member, active member of the Ninilchik Chamber of Commerce, on the site council for the school, teaches 2nd grade five days a week for Project Grad. She volunteers within the Community and has children in the school. Ms. Cary does these things because she is part of a bigger picture. She felt the sum of who she was now and where she came from qualifies her as a pretty informed individual as to the pulse of the community and the consequences of alcohol. Ms. Cary stated that she has spent countless hours researching the fact behind whether reducing the distance of a liquor license to the proximity of where children are present and whether it was in the best interest of the youth and the community but her conclusion was no, it was not.

Ms. Cary stated that some of the facts are that both in the Alaska Title for Review and Alaska Strategies to Prevent Underage Drinking studies show that a strong focus to decrease alcohol availability to underage individuals both in social and retail setting reduces youth alcohol use.

Ms. Cary commented that the established drug free zone in Alaska is 500 feet from schools. Many churches have homeschool programs as well youth activities. Community programs addressing alcohol problems such as AA meetings are often held in churches. There are national programs

which all of the communities are involved in such as Ribbon Week, Marine Awareness which addresses problems of alcohol and drug abuse in teens. Recently, the Kenai Peninsula Borough School District upheld the 500-foot measurement for the proximity of a liquor license in reference to a school, church where families homeschool their children and youth activities. She felt it should not be singled out, rather the children should be protected.

Ms. Carey stated that the City of Kenai just adopted or is in the process of adopting 1,000 feet for schools and 500 feet for churches and playgrounds in respect to marijuana ordinances. The proposal of the subject ordinance is an attempt to benefit one applicant. The current 500 foot criteria address all 44 schools and over 100 churches. It has served all of the communities well for the past 30 years and has been tested on numerous occasions and it has always been upheld. She felt that changing this ordinance will affect the entire Kenai Peninsula Borough not just one community. It is very difficult to hit all of the points when there are only 3 minutes to speak. Alcohol is a drug so for the sake of the children and the peace and dignity of all the communities and the stakeholders of the Kenai Peninsula Borough, she asked that the commission oppose this ordinance.

Chairman Martin asked if there were questions for Ms. Cary.

Commissioner Ruffner stated that Ms. Cary could have an additional couple minutes if she had additional pertinent and important information.

Ms. Cary stated that she testified that she owns a bar and a liquor store. She has looked not only at alcohol but also looked at tobacco and tobacco use. What she discovered with tobacco was that tobacco use was actually reducing once advertising stopped and the social norms, expectations and acceptance of tobacco were changed. She thought that putting alcohol closer to children impacts them greatly. One of the number one ways that children get alcohol was by what was called a shoulder tap. That is when somebody that was underage walks up and taps someone on the shoulder that was old enough to buy and says come on let's go party. School age children are right there. It is not very difficult.

Ms. Cary thought they should not put things in people's faces that they really don't want. The 500-foot distance is not a long distance but it has protected them and has protected the children well. There are studies that show that 91% of all teenage pregnancies that have occurred have occurred when teenagers have been drinking. 91% of those kids never considered having sex until they got drunk. There has been \$321.4 million spent to combat teenage alcohol abuse according to an Alaskan study in 2010. She thought all the things combined are really important and they need to change social norms. The social norms of drinking need to be reduced. They have so much more information now than they had 25-30 years ago when this was first enacted. Let's look at that, let's move forward, let's be leaders and not followers.

Chairman Martin asked if she found any before and after studies where a municipality or a jurisdiction had gone from 300 feet to 500 feet or 500 feet to 300 feet to see if there was any increase in underage drinking. He was trying to draw a correlation as what was too close and what was too far. Ms. Cary replied that she researched some of the States that have drug free zones. She stated that Alaska has one of the smallest drug free zones however; she could not find any direct correlation because she couldn't find any place where the limits were reduced. Ms. Cary thought Arizona was over 15,000 feet which was huge. There are 35 States that have a drug free zone of 1,000 feet and 9 States that have over 1,000 feet. There are only about 7 States that are under 1,000 feet.

Commissioner Foster asked for her comments regarding the wording for the measurement which would be measured by the shortest pedestrian route from the outer boundaries of the school ground or playground or public entrance to a church building versus to what was originally just public entrance of the licensed premise would be within 500 feet by straight line measurement from the property line. Ms. Cary replied that the pedestrian route was what Title 4 ABC Law states. She thought it would be fine to measure it either direction as long as the distance was kept at 500 feet. The shortest pedestrian route makes a lot of sense because when she was mapping, there were places that fell within the 500-foot radius on the Kenai Peninsula Browser. The thing was that to get there by straight line measurement then they literally had to walk through buildings.

She would not object to the verbiage being pedestrian route; her objection was to reducing the distance to 300 feet.

Commissioner Ruffner asked if her comments of objection had to do with competition in a small community. Ms. Cary replied that was not her objection. Commissioner Ruffner said that people would think that her objection had to do with competition of other bars coming into the small community. Ms. Cary replied that was one of the reasons why she started her testimony saying that the only thing people hear when she speaks was that she owns a bar for she does own a bar. If she would have known 25 years ago what she knows today, then she wouldn't own that bar and wouldn't own any liquor license. Ms. Cary has worked with FAS children, children who are autistic and have held the hands of teenage mothers when they have lost their children. She has watched her daughter's best friend lose both of their children due to drugs and alcohol. She has an 11-year-old and a 15-year-old in the school system so she was not going anywhere. Ms. Cary's objection was watch out for the safety of the children but someone can argue all that it was the parents' responsibility. The Ninilchik community has a 58% poverty level in their schools. There are not a lot of parents that are educating their children as to when, how and what's important. She has kids come into her classroom who are hungry because they hadn't eaten which makes her very sad that they don't stop and protect these kids. Ms. Cary stated that 200 feet wasn't a lot but keeping it at 500 was a step in the right direction. She would actually like to see the distance be increased to 1,000 feet but she didn't feel that was going to happen.

There being no further questions, the public hearing continued.

2. Patricia Patterson, Kenai

Ms. Patterson stated that she wasn't going to speak on this but decided to state that the 200 feet really didn't matter. She knows that she has to go by her family, friends and what she knows. The distance has never stopped her when she wanted to buy a bottle of wine from Oaken Keg versus IGA. These feet mean absolutely nothing but asked what it meant. It was business fair play. She stated she was a business owner and would not like somebody else coming and changing the rules and laws if she had a quarter of a million-dollar liquor license and followed all the rules and regulations for the last 20 years. Ms. Patterson felt this should be looked at from a business perspective and if it was fair to all the other liquor licenses in the State and if they were prepared for next year when a Marijuana store testifies that it was ok for alcohol so let's make it 300 feet distance for that. She was a business owner and personally felt that 200 feet doesn't matter.

Ms. Patterson would love to not have any distance at all and would love to see an open market for this area. She believed that a child wasn't going to drink or not drink because of where they pass in the back seat of a car. It is not what was on the corner that would make them drink but thought they may drink based on many other factors. She thought it was very unfair to all the other liquor licenses in the State.

Chairman Martin asked if there were questions for Ms. Patterson. Hearing none the public hearing continued.

Seeing and hearing no one else wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

MAIN MOTION: Commissioner Ruffner moved, seconded by Commissioner Isham to recommend adoption of Ordinance 2015-27, an Ordinance amending KPB 7.10.20 20 to reduce the Minimum Distance Between a liquor licensed Premise and an Established School, Church or Playground from 500 Feet to 300 Feet, and Changing the Method of Measuring the Distance to Match State Statute

Commissioner Glendening was informed by the KPB School District Board letter from Joe Arness stating that the Board of Education strongly opposes Ordinance 2015-27. He referred to the PC packet which lists *Liquor License Protests* on page 148-149 (D) states that "*The existence and location of the premises would unduly interfere or impact school operations.*" Commissioner Glendening stated those were his two findings and stated he would not support the approval of the ordinance.

Commissioner Foster asked if there was discussion about keeping the distance at 500 feet and changing the measurement methodology which sounds like it could make the distance from a school or church more

realistic. Mr. Best replied no, there was no discussion regarding that. Commissioner Foster asked if anyone entertained the idea to retain the 500-foot distance but change the wording in that one section

AMENDMENT MOTION: Commissioner Foster moved, seconded by Commissioner Carluccio to amend the entire Ordinance 2015-27 to retain the minimum distance of 500 feet of a school ground or a church building in which religious services are regularly conducted and measured by the shortest pedestrian route from the outer boundaries of the school ground or the public entrance of the church building.

Commissioner Foster asked if the distance limited the use of the church building to religious services only. Mr. Best replied that language for the distance came directly out of State Statutes. The Ordinance is just making it consistent with the State language. Chairman Martin thought it meant that it may not be a church building where AA meetings are being held but maybe a strip mall or house where church meetings are held.

Commissioner Carluccio asked if this would only apply to the establishment of a new liquor business because a church could open up next door. Chairman Martin replied that they were not regulating if churches can open next door to liquor stores but liquor stores opening next door to churches.

Commissioner Ecklund asked for clarification on the amendment. She asked if they were just amending the section on how to measure or if they were changing the distance from 500 feet to 300 feet. Commissioner Foster replied that the amendment motion was not changing the 500 foot distance to 300 feet. He stated the amendment was retaining the 500 foot distance but changing it to the new measurement system. Mr. Best commented that there was a reference to distance mentioned in Section D of the Ordinance. He stated they would have to recommend retaining 50 feet in that section as well.

Commissioner Foster and Commissioner Carluccio clarified that their amendment motion was to retain the 500 feet distance throughout the entire ordinance as mentioned in Section 1(A)(2c) and Section 1(D).

Commissioner Carluccio stated the ordinance was reducing the minimum. She asked how the language ordinance actually changes if the amendment passes. Chairman Martin replied that the Planning Commission was making a recommendation to the Assembly. Commissioner Foster stated that the Commission can recommend additional WHEREAS statements in support of their recommendations.

Commissioner Whitney clarified that this ordinance only applied to areas inside the Kenai Peninsula Borough and would not have any effect on the cities that may have a lower standard already. Mr. Best replied that was correct.

There being no further comments or questions, Chairman Martin called for a roll call vote.

AMENDMENT VOTE: The motion failed by a tie vote.

CARLUCCIO YES	COLLINS ABSENT	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING NO	HOLSTEN ABSENT
ISHAM NO	LOCKWOOD NO	MARTIN YES	RUFFNER NO	VENUTI RECUSED	WHITNEY NO	5 YES 5 NO 1 RECUSED 2 ABSENT

Commissioner Ruffner stated that he was inclined to have the Borough follow the State laws rather than adding an additional component. Mr. Best stated that the State distance was 200 feet. Commissioner Ruffner stated that it was 100 feet further than what the State requires.

Commissioner Foster stated he was supporting the schools and the current logic of the marijuana law being 500 feet as well as the drug free school zone being 500 feet so he would not support the main motion. Mr. Best clarified that the Drug Free Zone was 1,000 feet.

Commissioner Ernst stated that alcohol was a drug and it is allowed within 500 feet. Mr. Best replied that alcohol was not considered a banned substance. Commissioner Ernst stated that marijuana was also not considered a banned substance. Mr. Best replied that has to do with Federal law.

Commissioner Carluccio agreed with Commissioner Foster and would not be supporting the main motion.

There being no further comments or questions, Chairman Martin called for a roll call vote.

MAIN MOTION VOTE: The motion failed by a tie vote.

CARLUCCIO NO	COLLINS ABSENT	ECKLUND NO	ERNST YES	FOSTER NO	GLENDENING NO	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD NO	MARTIN YES	RUFFNER YES	VENUTI RECUSED	WHITNEY YES	5 YES 5 NO 1 RECUSED 2 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

5. Ordinance 2016-05, An Ordinance Enacting KPB 2.40.110 and KPB Chapter 7.20 – Marijuana Regulation, and Designating the Planning Commission as the Local Regulatory Authority Within the Kenai Peninsula Borough Under Alaska Statute Chapter 17.38 for Marijuana Establishments

Staff Report given by Holly Montague

PC Meeting: 1/25/2016

This is an ordinance that establishes the Planning Commission as the Regulatory Authority for the Kenai Peninsula Borough with regards to Marijuana Licensing. The ordinance does three things:

1. According to State regulations, the Borough can appoint a regulatory authority and by doing that they Borough will receive half of the application fee for the license. It also puts the borough in the position of issuing licenses if the State fails to do so. The State has adopted marijuana regulations.
2. The ordinance makes the Planning Commission the commenting agency to the State with regards to applications to the State for marijuana licenses.
3. This also authorizes the Planning Commission to implement time, place and manner ordinances that may be adopted by the Assembly.

Ms. Montague was available to answer questions.

Following is the memorandum that was included in the packet.

Pursuant to AS 17.38.210 the Kenai Peninsula Borough may establish a regulatory authority for the issuance of commercial marijuana licensing. The issuance of marijuana registrations or licenses by the borough at this time would be duplicative since the State of Alaska has established a board and adopted regulations for these purposes. However, a local regulatory authority could comment to the state regarding the issuance of state licenses within the borough. The establishment of a local regulatory authority also entitles the borough to a portion of the state fees associated with applications for state licenses for commercial marijuana facilities. The state will start processing licenses as early as February 24, 2016 and it is in the borough's best interest to have established an authority to comment to the state on the issuance of licenses within the borough in a manner similar to local liquor license protests: The Kenai Peninsula Borough Marijuana Task Force has also recommended the planning commission be established as the local regulatory authority with the assembly as an appeal board. Since the state has established regulations it is unlikely the borough will need an active regulatory board therefore an appeals board is not proposed at this time.

As the cities are also authorized to create their own regulatory authority, this borough regulatory authority would only have jurisdiction in the area of the borough outside the cities.