



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

**PHONE:** (907) 714-2200 • **FAX:** (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

[www.borough.kenai.ak.us](http://www.borough.kenai.ak.us)

**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 *mb*

**DATE:** February 1, 2016

**SUBJECT:** 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

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

A motion passed by unanimous consent to recommend approval of Ordinance 2016-05.

In the Ordinance, please make the following amendment to the last WHEREAS statement:

*WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of January 25, 2016, recommended approval by unanimous consent.*

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

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.

Additionally, AS 17.38.210(b) authorizes local time, place, and manner restrictions on commercial marijuana facilities. Any such land use regulations, which are also authorized by AS 29.40, would be recommended to the assembly by the planning commission and would be administered and implemented by the planning commission and planning department.

Consideration of this ordinance would be appreciated.

END OF STAFF REPORT AND MEMORANDUM

Commissioner Glendening asked if she could review the concept of rules established by the Assembly and how the Planning Commission will enforce or interpret them. Ms. Montague stated that it would be handled under land use regulations similar to how the material site conditional use permits are handled.

Commissioner Whitney asked if those regulations been formulated yet. Ms. Montague replied no, not at the Borough level. She clarified that they have not been adopted but there is an ordinance coming forward to the Planning Commission for review and recommendation soon.

Commissioner Carluccio asked if that was what Ms. Phelps who was on the Marijuana Taskforce was talking about at the beginning of the meeting. She asked if they were coming up with recommendations for the Ordinance. Ms. Montague replied yes, the Marijuana Taskforce developed recommendations for the Ordinance.

Commissioner Glendening asked if the Local Option Zone ordinance addressed land use concepts. Ms. Montague replied yes.

Commissioner Foster asked what the current State application fee will be. Ms. Montague believed the application fee was \$600 and the license fee was \$5,000.

Commissioner Ecklund asked who comments on liquor licenses. Ms. Montague replied that the Assembly makes recommendations regarding the liquor licenses.

Chairman Martin opened the meeting for public comment.

1. Dollynda Phelps, Nikiski

Ms. Phelps participated on the Marijuana Task Force. The task force is a very diverse group who spent a lot of hours reviewing the regulations. The regulations are very, very strict and there are a lot of requirements that each facility type would have to hold. Through the task force deliberations in the meetings, they came up with the recommendations to the Assembly. She believed it represents what would be good for this Borough. The task force spent a lot of time doing this and hoped that that time was understood and acknowledged. They hoped that it could be pushed onto the Assembly.

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

Commissioner Ruffner understood that the task force came up with these recommendations and the Assembly may or may not adopt those rules. Once adopted, those rules would be handed over to the Planning Commission to act as a local board to make recommendations to the State Board. The Planning Commission would be acting as the local marijuana board as has been described. He asked if that was a correct understanding. Ms. Montague replied that the way the ordinance was set up was that essentially the time, place and manner regulations that have been proposed by the task force would be a counter permit that the Planning Director would issue. That would go forward to the Planning Commission for them to consider as part of their recommendation to the State on the State License. There are two different processes; one is a comment on the State license which is in the Planning Commission's purview under the ordinance and second process would be a counter permit that is issued at the staff level.

Commissioner Carluccio asked what a Counter Permit was. Ms. Montague replied that a counter permit is a permit that is issued by staff rather than the Planning Commission. There are Counter Permits for certain material sites that do not come before the Planning Commission that are of a smaller magnitude than the conditional land use permits that the commission acts upon. She believed the River Center also issues Staff Permits that don't rise to the magnitude of the conditional use permits that come from the River Center.

Commissioner Carluccio asked if an applicant would still have to go to the State for licensing if a counter permit was issued. Ms. Montague replied that the applicant will still need to obtain a state license. The Planning Commission will consider the issues that are addressed in the counter permit which will either be approved or denied. There is a delinquency piece that is proposed to be Chapter 7.30 for delinquencies to the Borough. It was very similar to what was in the alcohol provisions for the Borough. If someone is delinquent to the Borough in certain obligations then that is a basis for a protest. The Planning Commission would also be taking that information from the Finance Department to consider whether or not to lodge a protest or non-objection.

Commissioner Carluccio asked if an application would go directly to the State if the Planning Office issues a counter permit. Ms. Montague replied that there are two separate processes. The land use regulation is something the State does not address or deal with it. In the Statute that was adopted by initiative which authorizes the Borough to adopt time, place and manner restrictions which is already authorized by AS 29.40 which governs the Planning Commission. The Borough can issue permits whether it was a permit at the Planning Commission level or at staff level. The task force recommended that it be a counter permit issued at the staff level rather than a permit issued by the Planning Commission. That recommendation came after the subject ordinance was drafted. She stated that the subject ordinance sets the Planning Commission up as the commenting agency to the State.

Commissioner Ecklund stated that a liquor license goes to staff and staff reviews it and then sends to the Assembly recommending approval. Typically, it is on the Consent Agenda unless there was a public outcry. She thought they would not follow that process because the applicant would be able to get a permit from the staff so she questioned why the Planning Commission would comment. Ms. Montague replied that it does provide for a public hearing at the Planning Commission level on the license which was something that would not happen at the staff level with a counter permit. Commissioner Ecklund asked if a counter permit and a license were two separate things. Ms. Montague replied there are two separate things. The license is something that happens with the State. The counter permit is the Borough's land use regulation on marijuana similar to having a land use regulation on material sites. She stated that the State has delegated land use regulation to the Boroughs which is why the Borough would be handling time, place and manner restrictions.

Ms. Phelps clarified that the process would be that the applicant for a marijuana license would apply with the State. They would send in all of the State requirements. When the State receives an approved, completed application, then it would be forwarded to the local municipalities. From there, the local municipalities would have 60 days to approve or deny the license. The Borough wouldn't ever see a license unless the State has already received a completed application for an applicant. Also, the application fee that the Borough would be getting half of was actually \$1,000. She stated that the renewal fee was \$600.

Commissioner Venuti stated that the Homer Advisory Planning Commission was recently charged with developing a marijuana ordinance. They were successful in coming up with a reasonable document and he believed it was being presented to the City Council. It wasn't easy to do but was somewhat easier to do in the city rather than the Borough because the City has zoning regulations. He asked if the Borough was going to establish zoning if the Planning Commission was going to be in a position of regulating marijuana in the Borough. He also asked if that would be criteria for regulating. Ms. Montague thought that certainly could be an approach that could be taken. It would be to establish zones but that was not the approach that was taken in the ordinance that was recommended by the task force. The ordinance that was recommended by the task force was more similar to the specific use type ordinances as seen in the material site ordinance. It doesn't establish zones but does establish a couple of rules that have to be followed.

Commissioner Foster asked Ms. Phelps what might be a counter permit and what would be something that would come before the Planning Commission. Ms. Phelps replied that the task force increased the distance from 500 feet to 1,000 feet from schools so it would coincide with the Federal regulations. They required the permit to indicate what type and location of the establishment. She stated that it gave the Borough some control of who gets one and gave them identifying factors so that they know where they are located and who owns them. The State regulations are very, very comprehensive and there are a lot of restrictions that are already in there which is why they didn't see a need to therefore increase it even further. As it is right now, it was going to be very difficult for any marijuana establishment to get started with the amount of fees there are. There is 24 hour video surveillance, alarms, marijuana inventory tracking systems and the list goes on and on. They have to provide notification of the establishment for 10 days as well as newspaper public notification process. Ms. Phelps stated that it was similar to alcohol but was more restrictive than alcohol regulations, which was why they felt it wasn't necessary to increase the restrictions. She stated that the limited cultivator license was specifically created to allow an avenue and incentive for black market dealers to become legal. There are two ways that they can go; either black market or legal market. It is going to be one or the other so if they aren't going to support the legal market; then they are going to support the black market.

Commissioner Foster asked what the Borough was doing about social clubs. Ms. Phelps stated that the Marijuana Control Board did not have the authority to create a club license so they vacated that idea.

However, they allowed an open consumption venue in a retail establishment. She stated they don't want people using marijuana in the parks, in their cars or on the sidewalks so it makes sense to provide a place for these folks to go especially when they are considering hundreds of thousands of tourists coming here every summer. Ms. Phelps felt that if they don't allow them a place to use their marijuana then they are basically criminalizing everybody who comes to visit the State who wants to enjoy cannabis. She stated that the State did provide a retail option that would allow open consumption in a separate part of the retail establishments but no clubs at this time.

Commissioner Whitney asked which body, the Assembly or Planning Commission would handle the protests of a particular license being issued in an area. Ms. Montague replied that they would be protesting to the Planning Commission because the ordinance proposes that the commission is the commenting agency to the State however, those people could also comment directly to the State as well.

Commissioner Ruffner understood that the applicant would apply to the State; it then comes to the Planning Department who then issues a counter permit. The only time an issue would come to the Planning Commission would be if someone protests it. He asked when the Planning Commission would weigh in on the license. Ms. Montague replied that the Planning Commission would be the commenting agency to the State. Every marijuana license would come before the Planning Commission however, that doesn't necessarily mean that there would always be controversial. Commissioner Ruffner stated that it wouldn't be a counter permit if it comes before the Planning Commission for comment. Ms. Montague replied that there are two separate processes.

Commissioner Ruffner asked if the subject ordinance was necessary if in fact they enact the recommendations from the task force. Ms. Montague replied that the subject ordinance sets up the Planning Commission as the regulatory authority. There are two ordinances; the one that is before the Planning Commission and the one that was recommended by the task force outlining their recommendations for regulations. It may be a good point that they could be merged.

Commissioner Ernst expressed confusion in how needlessly complex this has been becoming. He was under the impression that marijuana would be controlled like alcohol. Ms. Phelps replied that it was to tax and regulate marijuana. The campaign slogan was to regulate marijuana like alcohol but the ordinance itself was to tax and regulate marijuana. It seems the State has somewhat regulated it like alcohol with some similarities. The marijuana regulations are much more restrictive than alcohol. There are some similarities but not identical. Commissioner Ernst stated that he must have misunderstood that.

Commissioner Ernst asked if the Planning Commission regulates liquor license distribution. Chairman Martin replied that the Assembly regulates liquor licenses. Commissioner Ernst asked why they would regulate marijuana. Chairman Martin stated that the recommendation was to delegate the authority to the Planning Commission. Ms. Montague stated that the task force recommended that the Planning Commission be the regulatory authority. Commissioner Ernst asked if they would have power that they haven't had before. Chairman Martin stated that it was because it fit into their land use purview.

Commissioner Lockwood asked if this could be postponed until there was just one ordinance since there are two ordinances at this time. Ms. Best replied that they could have both the subject ordinance and the other ordinance on the same meeting.

Commissioner Glendening asked if it was possible to have the two ordinances combined to have one ordinance. Ms. Montague replied that the subject ordinance has already been introduced to the Assembly.

Commissioner Ecklund asked if it could be joined into one ordinance at the Assembly if they don't recommend approving the ordinance. Ms. Montague stated that the Planning Commission could make that recommendation to the Assembly.

Chairman Martin pointed out that they were still in public hearing process and asked if there were further questions for the testifier.

Ms. Phelps stated that February 24 was the day that all potential marijuana applicants can apply for licenses. As a potential new business owner, she urged the Planning Commission to get the process going so that when they apply for a license they have some security in doing so.

Commissioner Venuti stated that there are a lot of strict restrictions and asked who she saw as enforcing the rules. Ms. Phelps replied that it would first be the State Board where someone would be either in compliance or not in compliance. The State will have jurisdiction to inspect every facility at any time they choose. If a business is out of compliance and doesn't comply and fix the issues then the license would be revoked. She knows the State intends on inspecting and approving each and every individual facility. Commissioner Venuti asked if ABC would do the inspection. Ms. Phelps replied yes, it was now the Alcohol and Marijuana Control Office. Commissioner Venuti asked if they were based in Anchorage. Ms. Phelps replied yes. She believed there would be six officers in the State.

Commissioner Lockwood asked why the Borough would come up with an ordinance before they got the task force input and now there are two ordinances. Ms. Phelps replied she did not know.

Commissioner Carluccio understood that the subject ordinance was just establishing the Planning Commission as the go to so she doesn't see any harm in recommending approval.

Chairman Martin thanked Ms. Phelps for all her hard work and for her testimony.

There being no further comments or questions, the public hearing continued.

2. Patricia Patterson, Kenai

Ms. Patterson stated that she was not on the task force but attended a lot of the meetings. The reason the subject ordinance is before the Planning Commission is that it must be very clear from the State that there is a regulatory committee. The State was not clear on whether who could be the regulatory committee. It could be the Assembly, a group of people from the community; it could be a specific committee within the Borough or within a municipality. She stated that if there was a local regulatory committee then they would get money. The Borough would get a portion of the money if there is an appointed regulatory committee. It is separate process if they want regulate marijuana any further or by land use or by anything else. The Borough has to designate a regulatory authority in order for them to get any of the marijuana money. Ms. Patterson understood that the subject ordinance was to establish the Planning Commission as the regulatory committee which will be made very clear to the State. She stated the next thing to come would be what they wanted to do with regulating marijuana.

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.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Isham to recommend approval of 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

Commissioner Ruffner stated that Ms. Patterson's testimony solidified his decision to support the ordinance so he didn't see any reason to delay or postpone it.

Commissioner Foster agreed and seconded Commissioner Ruffner's comments.

Commissioner Glendening agreed that the testifier illuminated it for him. This ordinance is a place holder and fulfills a legal obligation that has been pronounced.

Commissioner Whitney stated this was just the first step and that there was a lot more to come.

**VOTE:** The motion passed by unanimous consent.

CARLUCCIO YES	COLLINS YES	ECKLUND YES	ERNST YES	FOSTER YES	GLENDENING YES	HOLSTEN ABSENT
ISHAM YES	LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI RECUSED	WHITNEY YES	11 YES 2 ABSENT

~~AGENDA ITEM F. PUBLIC HEARINGS~~

6. Ordinance 2016-01, An Ordinance Approving Correia Single-Family Residential (R-1) Local Option Zoning District and amending KPB 21.46.040

Staff Report given by Bruce Wall

PC Meeting: 1/25/2016

This ordinance would approve the formation of a Single-Family Residential (R-1) Local Option Zoning District (LOZ) in the Cohoe Loop area. Most of the lots within this proposed Local Option Zone is within the Correia Subdivision.

A petition has been submitted by property owners of nine parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZ), which is three-fourths of the 12 parcels within the proposed district. It meets the criteria of having 75% of the property owners submitting the petition. Pursuant to KPB 21.44.010, property owners may petition the assembly for greater restriction on land use than otherwise provided in Title 21 of the KPB Code. The proposed LOZ is consistent with Goal 6.5 of the 2005 KPB Comprehensive Plan which is to maintain the freedom of property owners in rural areas of the borough to make decisions and control use of their private land.

KPB 21.44.060 states, "The assembly shall approve, disapprove, or modify the proposed local option zoning district. The assembly reserves the right to disapprove a local option zoning district in its legislative capacity notwithstanding the district's meeting the criteria of this chapter."

It is the Planning Commission's job to make a recommendation to the Assembly.

END OF STAFF REPORT

Chairman Martin opened the meeting for public comment.

1. Kim Rudge-Karic, 53965 Alexander Ave, Kasilof  
Ms. Rudge-Karic is a resident in the subdivision. She and her husband own properties on Alexander Ave which includes the large 10 acre parcel. They have lived there for 32 years and have seen a lot of changes with Cohoe Loop. A lot of new and improved subdivisions are coming into their area. The large parcels are turning into smaller lots.

Ms. Rudge-Karic stated that the area has been stable for many years with property changing owners at a slow rate however recently they have had six property sales since the Fall of 2013. One of the big reasons had to do with the death of a family member of one resident, an adjacent parcel was sold. There was a person who bought that property who ended up bull dozing an area to erect three new 20x30 cabins so he intended to start a rental business. This threw the neighborhood into a state of disarray and instability. She stated that four out of the nine parcels that are located on Alexander Ave went up for sale immediately. A neighbor and her had to employ a lawyer to remove one of the trailers that was sitting on the place where they wanted to build these three cabins. The three cabins did not get built; they were built to the foundation level so they were abandoned because the man ran out of money. Ms. Rudge-Karic stated that another property owner who later sold out due to the excessive traffic and the camping on that land where the cabins were supposed to be constructed. She stated that a trooper who lived there sold out because he couldn't even buy his kids bikes because of the traffic. This was how it was affecting the neighborhood. She submitted pictures of what they have had to put up with in their neighborhood.