

Introduced by: Mayor, Gilman, Ogle
Date: 02/02/16
Shortened Hearing: 02/23/16
Action: Amended by Substitute
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-07**

AN ORDINANCE AMENDING KPB CHAPTER 7.20 AND ENACTING KPB CHAPTER 7.30 REGARDING LOCAL PROTESTS OF STATE MARIJUANA LICENSES, AMENDING KPB 21.25 AND ENACTING KPB CHAPTER 21.30 REGARDING PERMIT REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS, AND AMENDING KPB 21.50 REGARDING VIOLATIONS AND ENFORCEMENT

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 in part to 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 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 a borough-issued counter permit for marijuana establishments at its January 20, 2016, meeting; and

WHEREAS, at its meeting of _____ the planning commission recommended _____;

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 planning commission 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, KPB 7.30, and KPB 21.30. The planning commission public hearing shall be held prior to submitting comments on the license application 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. Planning Commission review—Applications—Renewals.

A. The planning commission shall review 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. The planning commission shall not review applications submitted for a renewal by the same licensee within the borough, where the location of the licensed premises also remains the same or where the licensed premises lies within a city in the borough, unless the applicant falls under sections 7.30.020(A).

C. After planning commission review and action as provided in KPBB 7.30.020, the borough planning department shall provide a letter to the State of Alaska Marijuana Control Board informing it of the planning commission's non-objection or protest, as appropriate.

7.30.020. Planning commission protest.

A. The planning commission shall cause a protest to be filed with the State 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.
2. Where applications for a new license do not meet the requirements for a marijuana establishment permit under KPBB 21.30.

B. Notwithstanding the provisions of this section, 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.

SECTION 3. That KPB 21.25.030 is hereby amended by adding the following definitions:

21.25.030. Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

"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 4. That KPB.21.25.040(A) is hereby amended as follows:

KPB 21.25.040 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 21.30.

a. marijuana establishment permits are counter permits and are not subject to the requirements of KPB 21.25.050-060.

SECTION 5. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter to be numbered KPB 21.30 which shall read as follows:

21.30 MARIJUANA ESTABLISHMENT PERMITS AND STANDARDS.

21.30.010. 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, except KPB 21.25.050-060, are applicable to marijuana establishments, and the provisions of KPB 21.25 and 21.30 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.30, the provisions of KPB 21.30 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. Application to the Kenai Peninsula Borough shall be made no later than 5 days after submittal of a license application to the state.

21.30.020. 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 KPB 21.30.020(A)(1)-(4), may be used to satisfy the requirements of this section;
6. 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.

21.30.030. 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, and to protect public safety. Only the conditions set forth in KPB 21.30.040 may be imposed to meet these standards.

21.30.040. Permit conditions.

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

1. Marijuana establishments shall not:
 - a. 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.
 - 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
- b. 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
- c. be current in all Kenai Peninsula Borough obligations consistent with KPB 7.30; and
- d. maintain a state license issued pursuant to AS 17.38 and 3 AAC 306.

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 standards set forth in KPB 21.30.030(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 volunteered permit condition may also be proposed and added to the permit by the planning commission at the time of the planning commission hearing on the state license application for the marijuana establishment. A change in volunteered permit conditions may be proposed at permit extension or modification.

21.30.050. Permit extension, modification and revocation.

A. Permittees must submit a request in writing for permit extension every 5 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; (2) the permittee has had a permit violation in the last two years and has not fulfilled compliance requests;

or (3) the standards in KPB 7.30 have been violated and have not been satisfactorily remedied in accord with that chapter.

D. A permit extension which requests a modification of operations regulated by this chapter shall be treated as a new application pursuant to KPB 21.30.060.

E. There shall be no fee for permit extensions approved by the planning director. The fee for a permit modification processed under KPB 21.30.050(D) and 21.30.060 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.

21.30.060. 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.

21.30.070. Violations.

Violations of this chapter shall be governed by KPB 21.50.

21.30.080. Appeals.

Appeals of the planning director's decisions and findings in regard to this title are subject to appeal to the planning commission within 10 days of distribution of the planning director's written decision. The planning commission hearing on appeal may be combined with the public hearing on the state license application for a marijuana establishment. The commission's decision may be further appealed to the Board of Adjustment as described at KPB 21.20.200-360.

SECTION 6. That KPB 21.50.050 is hereby amended by adding the following fines:

21.50.050. Fines.

A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially

set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
KPB 21.30.010(A)	Failure to obtain a marijuana facility permit	\$300.00
KPB 21.30.040	Violation of marijuana facility permit conditions	\$300.00

B. For enforcement notices involving a failure to obtain a permit, if a permit is subsequently granted by staff or the planning commission, the permit fee shall be doubled. This section is applicable to violations of KPB 21.06.040, 21.06.045, 21.06.055, 21.09.090(E), 21.18.071, 21.18.072, 21.18.081, 21.18.090, 21.29.020, 21.30.010, 21.40.100, 21.42.110(D)[, 21.44.0130(F)].

SECTION 7. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2016.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Bagley, Dunne, Holmdahl, Johnson, Knopp, Ogle, Welles, Gilman

No: None

Absent: None