

AGENDA
KENAI PLANNING & ZONING COMMISSION – REGULAR MEETING
APRIL 10, 2019 - 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVENUE, KENAI, ALASKA
www.kenai.city

1. CALL TO ORDER

- a. Pledge of Allegiance
- b. Roll Call
- c. Agenda Approval
- d. Consent Agenda
- e. *Excused absences – Victoria Askin

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

2. APPROVAL OF MINUTES - None

3. SCHEDULED PUBLIC COMMENT - John Czarnezki – City Planner, City of Soldotna regarding the sign code for the City of Soldotna

**4. UNSCHEDULED PUBLIC COMMENT
*(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)***

5. CONSIDERATION OF PLATS

- a. **Resolution PZ2019-10** – Original Preliminary Plat of Inlet Woods 2019 Replat, submitted by McLane Consulting, Inc., P.O. Box 468, Soldotna, Alaska 99611, on behalf of the Hall Building LLC, P.O. Box 2829, Kenai, AK 996111

6. PUBLIC HEARINGS - None

7. UNFINISHED BUSINESS - None

8. NEW BUSINESS

- a. **Discussion and Recommendation** – Application for Renewal of Lease Land within the Airport Reserve submitted by Schilling Rentals LLC, for the property described as Lot 9A, FBO Subdivision No. 9, located at 433 N. Willow Street, Kenai, Alaska 9961113

9. PENDING ITEMS – None

10. REPORTS

a. City Council20
b. Borough Planning25
c. Administration31

11. ADDITIONAL PUBLIC COMMENT

(Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated)

12. INFORMATIONAL ITEMS

a. Planning and Zoning Resolutions – First Quarter 2019 33
b. Building Permits – First Quarter 2019 34
c. Code Enforcement – First Quarter 2019 35
d. Information on Ordinance 3061-2019 – Amending Kenai Municipal Code 14.20.320 –
Definitions, 14.20.330 – Standard for Commercial Marijuana Establishments and
14.22.010 – Land Use Table, to Incorporate Onsite Consumption of Marijuana at Retail
Marijuana Establishments 37

13. NEXT MEETING ATTENDANCE NOTIFICATION - April 24, 2019

14. COMMISSION COMMENTS AND QUESTIONS

15. ADJOURNMENT



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STAFF REPORT

To: Planning & Zoning Commission

From: Elizabeth Appleby, City Planner

Date: March 29, 2019

Subject: Resolution PZ2019-10 – Preliminary Subdivision Plat – Inlet Woods Subdivision 2019 Replat

Applicant: Hall Building LLC
P.O. Box 2829
Kenai, AK 99611

Submitted By: McLane Consulting, Incorporated
P.O. Box 468
Soldotna, Alaska 99669

Requested Action: Preliminary Subdivision Plat – Inlet Woods 2019 Replat

Legal Description: Lot 27, Block 12, Inlet Woods Subdivision Part 1
Lot 28, Block 12, Inlet Woods Subdivision Part 1

Property Address: 1317 Channel Way
1315 Channel Way

KPB Parcel No: 04101109
04101108

Lot Size: 8,445 square feet (0.19 acres)
8,640 square feet (0.20 acres)

Existing Zoning: Suburban Residential (RS)

Current Land Use: Vacant Lots

Land Use Plan: Suburban Residential

GENERAL INFORMATION

Hall Building LLC owns Lots 27 and 28, Block 12, Inlet Woods Subdivision Part One and has submitted a plat which would vacate the property lines between the two lots to create one larger lot. Hall Building LLC has indicated that because of the size and configuration of the two existing lots, it would be better to construct one residence on the larger lot instead of two residences on the existing smaller lots.

Application, Public Notice, Public Comment

KMC 14.10.010 General under *Chapter 14.10 Subdivision Regulations* states preliminary plats or replats must first be submitted to the City for review prior to the submittal of the plat to the Kenai Peninsula Borough Planning Department. Kenai Municipal Code (*KMC*) *14.10.060* describes the process in more detail. The plat will be reviewed first by the City of Kenai Planning and Zoning Commission and then by the Kenai Peninsula Borough's Plat Committee and Planning Commission.

The property owners completed the City of Kenai preliminary plat submittal form. City staff deemed the application to be complete. The City of Kenai follows *Kenai Peninsula Borough Code 20.25.070* and *20.25.080* for preliminary plat submittal requirements.

City staff published notice of the consideration of the plat in the *Peninsula Clarion*. No public comments have been received as of April 4, 2019.

ANALYSIS

The parcels are within the Suburban Residential (RS) Zone of the City of Kenai. Pursuant to *KMC 14.24.010 Minimum lot area requirements*, the minimum lot size for a single family dwelling is 7,200 square feet. The proposed Lot 27A, Block 12, Inlet Woods 2019 Replat would be approximately 0.39 acres (17,076 square feet) and meets the minimum lot size requirements. The proposed lot also meets the minimum lot width of sixty (60) feet as specified by *KMC 14.24.020 General requirements*.

Channel Way and Backwoods Avenue provide access to the proposed lot. Channel Way and Backwoods Avenue are paved and City-maintained streets. The rights-of-way for Channel Way and Backwoods Avenue are sixty feet (60') in width, which meets the minimum width of sixty feet (60') pursuant to *KMC 14.10.070(b)(2) Subdivision design standards, Street and Alley Width*. The proposed plat does not dedicate any additional rights-of-way. Street names are denoted accurately on the preliminary plat.

City of Kenai water and sewer lines are within the right-of-way for Channel Way. The property owner will be required to connect to City water and sewer services because existing public water and sewer mains are within 200 feet of the property, pursuant to *KMC 17.10 Connection to Public Water System* and *KMC 17.20 Connection to Public Sewer System*.

The easement for utilities is along the front ten feet (10') of the property line fronting Channel Way. An installation agreement is not required.

Based upon the submitted materials and this review, the preliminary plat meets requirements of *KMC Subdivision design standards* and *KMC 14.10.080 Minimum improvements required* under

Chapter 14.10 Subdivision Regulations. City staff recommends a condition of approval for the property to conform to all federal, State of Alaska, and local regulations.

RECOMMENDATIONS

City staff recommends approval of the preliminary plat of Inlet Woods 2019 Replat, subject to the following condition:

- a. Further development of the property shall conform to all federal, State of Alaska, and local regulations.

ATTACHMENTS

1. Resolution No. PZ2019-09
2. Application
3. Preliminary Plat
4. Map

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**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. 2019 - 10**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THAT INLET WOODS 2019 REPLAT ATTACHED HERETO AS EXHIBIT "A" BE APPROVED SUBJECT TO THE CONDITIONS OUTLINED BELOW.

WHEREAS, the City of Kenai received the plat attached as Exhibit A from McLane Consulting, Incorporated; and,

WHEREAS, the plat meets City Code requirements of the Suburban Residential Zone; and,

WHEREAS, the plat accurately represents street names and surrounding properties; and,

WHEREAS, the plat will not change the existing access to the properties; and,

WHEREAS, Channel Way and Backwoods Avenue, which are paved and City-maintained roads, provide access to the property; and,

WHEREAS, the plat accurately shows utility easements; and,

WHEREAS, City water and sewer lines are located within the right-of-way for Channel Way and the property owner will be required to connect to City water and sewer services; and,

WHEREAS, an installation agreement is not required.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the Inlet Woods 2019 Replat attached as Exhibit "A" be approved based on the following findings:

- a. Pursuant to Kenai Municipal Code 14.10.070 Subdivision design standards, the plat conforms to the minimum street widths, an easement is sufficiently provided for utilities, the proposed lot would be arranged to provide satisfactory and desirable building sites, and the proposed lot meets standards for connection to City water and sewer lines.
- b. Pursuant to Kenai Municipal Code 14.10.080 Minimum improvements required, there is adequate access and facilities available to the proposed parcel. An installation agreement is not required.
- c. Pursuant to Kenai Municipal Code 14.24.010 Minimum lot area requirements, the lots meet City standards for minimum lot sizes.

- d. Pursuant to Kenai Municipal Code 14.24.020 General Requirements, the lots meet City standards for minimum lot width, maximum lot coverage, maximum height, and setbacks.

Section 2. That the approval be subject to the following condition:

- a. Further development of the property shall conform to all federal, State of Alaska, and local regulations.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, this 10th day of April, 2019.

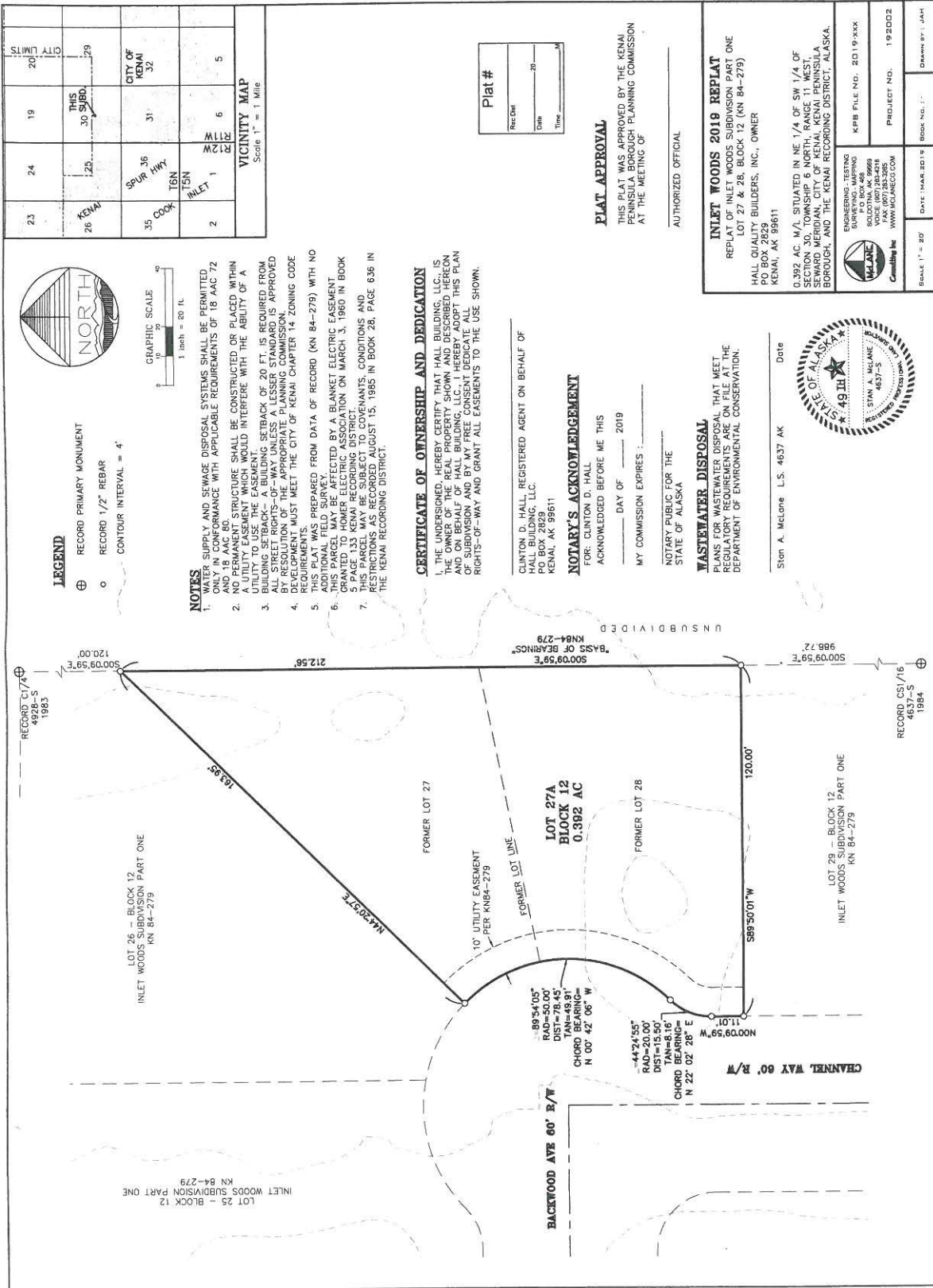
JEFF TWAIT, CHAIRPERSON

ATTEST:

JAMIE HEINZ, CITY CLERK

DRAFT

EXHIBIT 'A'



LEGEND

- ⊕ RECORD PRIMARY MONUMENT
- RECORD 1/2" REBAR
- CONTOUR INTERVAL = 4'



- NOTES**
1. WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS SHALL BE PERMITTED ONLY IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF 19 AAC 72.
 2. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
 3. ALL UTILITY EASEMENTS SHALL BE SETBACK FROM ALL STREET RIGHTS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
 4. DEVELOPMENT MUST MEET THE CITY OF KENAI CHAPTER 14 ZONING CODE REQUIREMENTS.
 5. THIS PLAT WAS PREPARED FROM DATA OF RECORD (KN 84-279) WITH NO ADDITIONAL FIELD SURVEY.
 6. THIS PARCEL MAY BE AFFECTED BY A BLANKET ELECTRIC EASEMENT GRANTED TO HOMER RECORDING DISTRICT BY RESOLUTION ON MARCH 3, 1960 IN BOOK 636 IN THE KENAI RECORDING DISTRICT.
 7. THIS PARCEL MAY BE SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS AS RECORDED AUGUST 15, 1985 IN BOOK 28, PAGE 636 IN THE KENAI RECORDING DISTRICT.

CERTIFICATE OF OWNERSHIP AND DEDICATION

I, THE UNDERSIGNED, HEREBY CERTIFY THAT HALL BUILDING, LLC, IS THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND ON BEHALF OF HALL BUILDING, LLC, I HEREBY AGREE TO THIS PLAN ON BEHALF OF HALL BUILDING, LLC, AND BY MY FREE CONSENT DELEGATE ALL RIGHTS-OF-WAY AND GRANT ALL EASEMENTS TO THE USE SHOWN.

CLINTON D. HALL, REGISTERED AGENT ON BEHALF OF HALL BUILDING, LLC,
PO BOX 2829
KENAI, AK 99611

NOTARY'S ACKNOWLEDGEMENT

FOR: CLINTON D. HALL

ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ 2019

MY COMMISSION EXPIRES : _____

NOTARY PUBLIC FOR THE STATE OF ALASKA

WASTEWATER DISPOSAL

PLANS FOR WASTEWATER DISPOSAL THAT MEET REGULATORY REQUIREMENTS ARE ON FILE AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

Stan A. McLone L.S. 4637 AK Date _____



PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF _____

AUTHORIZED OFFICIAL _____

Rec Date	_____
Dist	_____
Time	_____

INLET WOODS 2019 REPLAT

REPLAT OF INLET WOODS SUBDIVISION PART ONE
LOT 27 & 28, BLOCK 12 (KN 84-279)

HALL QUALITY BUILDERS, INC., OWNER
KENAI, AK 99611

0.392 AC. M/L SITUATED IN NE 1/4 OF SW 1/4 OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, CITY OF KENAI, KENAI PENINSULA BOROUGH, AND THE KENAI RECORDING DISTRICT, ALASKA.

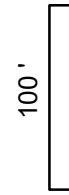
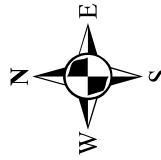
ENGINEERING, TESTING
SURVEYING, MAPPING
McLONE
CONSULTING INC.
SOLICITATION AK 99609
PO BOX 2829
KENAI, ALASKA 99611
PHONE 907.283.2829
FAX 907.283.2826
WWW.MCLONECO.COM

Scale 1" = 20' DATE: MAR 2019 BOOK NO. 17 DRAWN BY: JAH

PROJECT NO. 192002

23	24	19	20	CITY LIMITS
26	25	THIS 30 SUBD.	29	
35 COOK	36 SPUR HWY	31		CITY OF KENAI 32
2	1	6	5	
VICINITY MAP Scale 1" = 1 Mile				

**Lots 27 & 28, Block 12
Inlet Woods Part One**



1 inch equals 104 feet

The information depicted here on is for graphic representation only of the best available sources. The City of Kenai assumes no responsibility for errors on this map.

Date: 3/26/2019





**CITY OF KENAI PLANNING DEPARTMENT
PRELIMINARY PLAT SUBMITTAL FORM**

APPLICANT	Clinton D. Hall
MAILING ADDRESS	PO Box 2829
CITY, STATE, ZIP	Kenai, AK 99611
PHONE	907 252 7272

NAME OF PLAT	Inlet Woods 2019 Replat	
	Preliminary Plat	Revised Preliminary Plat

CURRENT ZONING WHERE APPLICABLE: Suburban Residential

USE: Residential Recreational Commercial Other

SEWER: On Site City Community

WATER: On Site City Community

Vacation of Public Right-of-Way Yes No

STREET NAME:

EXCEPTIONS REQUIRED AND REQUESTED:

COMMENTS:

Clinton D. Hall
Applicant's Signature

3 6 2019
Date

12/12/2018



Kenai Peninsula Borough Planning Department
144 North Binkley Street
Soldotna, AK 99669

Plat Submittal Form

Survey Firm Name & Address:

McLane Consulting Phone: 907-283-4218
38240 Kenai Spur Highway
Soldotna AK 99669 Email: jhall@mclanecg.com

- Checkboxes for Preliminary Plat, Revised Preliminary Plat, Minor Revisions, Major Revisions, Preliminary Design, Subdivision Plat Phase. Includes Preliminary Design Name field.

- Checkboxes for Submittal of 1 full size plats and 7- 11x17 size plats, Plat Submittal Fee in the Amount of \$200, Final Plat - Preliminary Approval Granted, Plat Recording Fee in the Amount of, Abbreviated Plat Yes/No.

Plat Name: Inlet Woods 2019 Replat

General Location: At intersection of Backwood Avenue and Channel Way

- USE: Checkboxes for Residential, Recreational, Commercial, Agricultural, Other.

- Checkboxes for City minutes attached (Plat location is in city limits or Bridge Creek Watershed District.)

CURRENT ZONING WHERE APPLICABLE: Suburban Residential

- SEWER: On site, City, Community; WATER: On site, City, Community

EXCEPTIONS REQUIRED AND REQUESTED:

- Numbered list for exceptions (1-4)

Comments: (Attach an additional sheet if needed.)

Original Signature(s) of Owner(s) of a Majority of Land within the Subdivision

Signature lines for Clinton D. Hall with Print Name and Signature labels.

Please Note: If you are signing as a representative or official of a corporation and own less than 50% of said corporation (or you are not listed as a registered agent in the State of Alaska corporation database), a corporate resolution or signed document from the Board of Directors clearly stating your authorization to sign for the corporation must be attached.



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MEMORANDUM

TO: Planning and Zoning Commission

THROUGH: Paul Ostrander, City Manager

Cc: Mary Bondurant, Airport Manager

FROM: Elizabeth Appleby, City Planner

DATE: April 4, 2019

SUBJECT: **Discussion and Recommendation** – Application for Renewal of Lease Land within the Airport Reserve submitted by Schilling Rentals, LLC, for the property described as Lot 9A, FBO Subdivision No. 9, located at 433 N. Willow Street, Kenai, Alaska 99611

Schilling Rentals, LLC (Schilling Rentals), submitted an application to the City for a renewal of the lease set to expire on May 31, 2019 on Lot 9A, FBO Subdivision. The application requests a term of 36 years, however, after confirming the investment amount of \$224,475 against the term table in Kenai Municipal Code (KMC) 21.10.080, the City and the applicant are in agreement to a term of 33 years.

Schilling Rentals also leases the adjacent property on Lot 11A that has a green-colored hangar. Lot 9A would support the hangar operations of the adjacent parcel. The original lease application notes the parcel uses will involve supplying parking for aircraft, providing for access of service vehicles, and the transport of aircraft to the adjacent hangar located on Lot 11A. Schilling Rentals included photos in their application to demonstrate improvements (gravel and site preparation work) that have been done during the five years of their current lease.

The parcels are within the Airport Light Industrial (ALI) Zone per Kenai Municipal Code (KMC) 14.20.065. The intent of the ALI Zone is to protect the viability of the Kenai Municipal Airport as a significant resource to the community by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. The proposed use by Schilling Rentals is a permitted use in the ALI Zone and is a compatible land use.



The Imagine Kenai 2030 Comprehensive Plan outlines goals, objectives, and action items for the City, including this one pertaining to the Kenai Municipal Airport:

- Objective T-1: *Support future development near or adjacent to the airport when such development is in alignment with the Kenai Municipal Airport's primary mission, "To be the commercial air transportation gateway to the Kenai Peninsula Borough and Cook Inlet."*

The proposed use by Schilling Rentals complies with the Imagine Kenai 2030 Comprehensive Plan in that it supports development on lease lots and the development is in alignment with the Kenai Municipal Airport's marketing strategy.

The Airport Land Use Plan was developed to identify the highest and best uses of Kenai Municipal Airport land. The Airport Land Use Plan discusses leasing land and enhancing opportunities for local economic development. The proposed use by Schilling Rentals complies with the Airport Land Use Plan.

Does the Planning and Zoning Commission recommend the execution of a lease renewal between the City of Kenai and Schilling Rentals, LLC for Lot 9A, FBO subdivision?

Thank you for your consideration.



City of Kenai
Kenai Municipal Airport
Land Lease Application

RECEIVED

CITY OF KENAI

DATE 2-15-19

Application for
PLANNING DEPARTMENT

- New Lease
- Amendment
- Extension/Renewal

DAB

Application Date: 8/13/18 2/15/19

Applicant Information

Name of Applicant: Schilling Rentals, LLC

Mailing Address: 420 North Willow Street City: Kenai State: AK Zip Code: 99611

Phone Number(s): Home Phone: () Work/ Message Phone: (907) 283 7556

E-mail: (Optional) duane@uptownmotel.com

Name to Appear on Lease: Same

Mailing Address: City: State: Zip Code:

Phone Number(s): Home Phone: () Work/ Message Phone: ()

E-mail: (Optional)

Type of Applicant: Individual (at least 18 years of age) Partnership Corporation
 Limited Liability Company (LLC) Government Other

Description of Property and Term Requested

Legal Description of Property: FBO Sub No 9 Lot 9A

Does the Property Require Subdivision? (if Yes, answer next two questions) YES NO

Are you prepared to be responsible for all costs associated with subdivision? YES NO

Do you believe the proposed subdivision would serve other Airport purposes? YES NO

Do you have or have you ever had a lease with the City of Kenai? YES NO

If Yes, please provide description of property leased (e.g. legal or physical description):
General Aviation Apron Sub 3 Lot 1A Blk 4; GAA Sub 1 amended Lot 2 Blk 2; GAA Sub 3 Lot 3 Blk 2; FBO Sub 9 Lot 11A;

Is this application for renewal or term extension of an existing lease? YES NO

If Yes, please provide a description of the property leased:
Property used for aircraft parking, loading, and support facilities for the hangar and office space on the adjacent Lot 11A

Lease Term Requested: 45 36 DAB Starting Date: June 1st, 2019

Proposed Use and Activities

Proposed Use (check one): Aeronautical Non-Aeronautical

Do you plan to construct new or additional improvements? YES NO

Will the proposed improvement change or alter the use under an existing lease? YES NO

If yes, what is the new proposed use?

What is the type (e.g. building, land) and nature (e.g. maintenance, new construction) of the proposed improvement?

see attached pic of improvements

What is the estimated amount of investment in the construction of new permanent improvements on the premises?
\$180,000 in land improvements completed Summer 2018

\$224,475.00 JAB

List of proposed use and business activities:

Aircraft parkink/staging & associated employee vehicle parking


Lease Extension or Renewal*

*This section not required for new lease or amendment applications

Method to determine value of improvements/term for a lease renewal or expiring lease:

- Professional estimate of the remaining useful life of the principle improvement on the property
- Market value appraisal of the principle improvement on the property
- Purchase price of improvements

Submitting an application for a lease does not give the applicant a right to lease or use the land requested in the application. The application shall expire twelve (12) months after the date the application has been made if the City and the applicant have not, by that time, entered into a lease, unless the City Council for good cause grants an extension for a period not to exceed six (6) months. The City has no obligation to amend, renew or extend a lease and may decline to do so upon making specific findings as to why a lease renewal, extension, or amendment is not in the best interest of the City

Signature:		Date:	8/13/2018
Print Name:	Michael Schilling	Title:	Member







Lot 9A
 FBO Subdivision No. 9
 (Kenai Peninsula Borough
 Parcel Number
 04336047)
 433 North Willow Street



1 inch equals 104 feet

The information depicted here on is for graphic representation only of the best available sources. The City of Kenai assumes no responsibility for errors on this map.

Date: 4/1/2019

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ACTION AGENDA
KENAI CITY COUNCIL – REGULAR MEETING
APRIL 3, 2019 – 6:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
<http://www.kenai.city>

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Agenda Approval
4. Consent Agenda (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

All items listed with an asterisk () are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a council member so requests, in which case the item will be removed from the consent agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. SCHEDULED PUBLIC COMMENTS (*Public comment limited to ten (10) minutes per speaker*)

1. **Mark Griffin** – Kenai Golf Course: Past, Present, and Future.

C. UNSCHEDULED PUBLIC COMMENTS (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

D. PUBLIC HEARINGS

1. **POSTPONED TO 4/17/19. Ordinance No. 3056-2019** - Amending Kenai Municipal Code 14.22.010-Land Use Table, to Allow Business/Consumer Services and Taxidermy/Gunsmithing in RR1 Zoning District by Conditional Use Permit and Removing the Location Restriction on Professional Offices Allowed by Conditional Use Permit Within the RR1 Zone. (Council Members Peterkin & Glendening)
2. **ENACTED UNANIMOUSLY. Ordinance No. 3057-2019** – Accepting and Appropriating a Grant from the State of Alaska Department of Public Safety for Crime Prevention and Response and Equipment for the Purchase of Portable Radios and Accessories for the Police Department, and to Purchase Supplies in Support of the D.A.R.E Programs Conducted by the Police Department in Local Elementary Schools. (Administration)
3. **ENACTED UNANIMOUSLY. Ordinance No. 3058-2019** – Amending Provisions in Kenai Municipal Code Title 7 – Finance, Taxation, and Business Affairs of the City, including Investment of Monies – Scope and Objectives 7.22.010; Land Sale Permanent Funds – General Fund Land Sale Permanent Fund 7.30.005; Investments 7.30.020; Investments 7.30.020; Investments 7.30.020; and Investments 7.30.020 for

Updates to Management Practices for the City's General Land Sale and Airport Land Sale Permanent Funds. (Administration)

4. **ADOPTED UNANIMOUSLY. Resolution No. 2019-19** – Supporting the Kenai Peninsula College. (Vice-Mayor Navarre)
5. **ADOPTED UNANIMOUSLY. Resolution No. 2019-20** – Supporting the Continued Operation of Sentenced Facilities at Wildwood Correctional Complex. (Mayor Gabriel & Council Member Peterkin)
6. **ADOPTED UNANIMOUSLY. Resolution No. 2019-21** – Authorizing the Award of a Construction Agreement for the Waste Water Treatment Plant Blowers Replacement / DO Analyzer Installation Project. (Administration)
7. **ADOPTED UNANIMOUSLY. Resolution No. 2019-22** – Authorizing the City Manager to Enter into an Amended Bar and Lounge Concession Agreement with the Kenai Municipal Airport. (Administration)

E. MINUTES

1. **APPROVED BY THE CONSENT AGENDA.** *Regular Meeting of March 20, 2019

F. UNFINISHED BUSINESS – None.

G. NEW BUSINESS

1. **APPROVED BY THE CONSENT AGENDA. *Action/Approval** – Bills to be Ratified. (Administration)
2. **INTRODUCED BY THE CONSENT AGENDA/PUBLIC HEARING SET FOR 4/17/19. *Ordinance No. 3059-2019** – Increasing Estimated Revenues and Appropriations in the Airport Special Revenue and Airport Improvements Capital Project Funds and Authorizing a Professional Services Agreement for the Design of the Alaska Regional Fire Training Facility Rehabilitation Project. (Administration)
3. **INTRODUCED BY THE CONSENT AGENDA/PUBLIC HEARING SET FOR 4/17/19. *Ordinance No. 3060-2019** – Increasing Estimated Revenues and Appropriations in the Terminal Improvements Capital Fund and Authorizing an Increase to the Construction Purchase Order to Blazy Construction, Inc. (Administration)
4. **INTRODUCED/ REFERRED TO THE PLANNING & ZONING COMMISSION FOR A RECOMMENDATION/PUBLIC HEARING SET FOR 5/1/19. *Ordinance No. 3061-2019** – Amending Kenai Municipal Code 14.20.320 - Definitions, 14.20.330 - Standard for Commercial Marijuana Establishments and 14.22.010 - Land Use Table, to Incorporate Onsite Consumption of Marijuana at Retail Marijuana Establishments into the City Of Kenai's Code of Ordinances. (Administration)
5. **\$300 DONATION GRANTED. Action/Approval** – Donation Request for the Kenai River Festival. (Mayor Gabriel)

6. **SPECIAL MEETING SET FOR 4/23/19 AT 4:30 P.M. Discussion** – Schedule Special Meetings to Conduct Annual Performance Evaluations for the City Attorney, City Clerk, and City Manager. (Mayor Gabriel)
7. **WORK SESSION SET FOR 4/18/19 AT 2:00 P.M. Discussion** – Schedule a Work Session to Review and Discuss the Fiscal Year 2020 City of Kenai Budget. (Mayor Gabriel)

H. COMMISSION/COMMITTEE REPORTS

1. Council on Aging
2. Airport Commission
3. Harbor Commission
4. Parks and Recreation Commission
5. Planning and Zoning Commission
6. Beautification Committee
7. Mini-Grant Steering Committee

I. REPORT OF THE MAYOR

J. ADMINISTRATION REPORTS

1. City Manager
2. City Attorney
3. City Clerk

K. ADDITIONAL PUBLIC COMMENT

1. Citizens Comments (*Public comment limited to five (5) minutes per speaker*)
2. Council Comments

L. EXECUTIVE SESSION

M. PENDING ITEMS

N. ADJOURNMENT

INFORMATION ITEMS

1. Purchase Orders between \$2,500 and \$15,000 for Council Review
2. Notice of Revised Schedule for Environmental Review of the Alaska LNG Project

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.

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Planning Commission Tentative Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2215 • (907) 714-2378 Fax

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

Max J. Best, Planning Director • Charlie Pierce, Borough Mayor

*Blair Martin, Chairman – Kalifornsky Beach • Robert Ruffner, Vice Chairman – Kasilof/Clam Gulch
Dr. Rick Foster, Parliamentarian – Southwest Borough • Syverine Abrahamson-Bentz – Anchor Point/Ninilchik
Jeremy Brantley – Sterling • Paulette Bokenko-Carluccio – City of Seldovia • Cindy Ecklund – City of Seward
Robert F. Ernst – Northwest Borough • Diane Fikes – City of Kenai • Virginia Morgan – East Peninsula
Franco Venuti – City of Homer • Paul Whitney – City of Soldotna*

April 8, 2019

7:30 p.m.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk (*) are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

***1. Time Extension Request - None**

***2. Planning Commission Resolutions - None**

***3. Plats Granted Administrative Approval - None**

***4. Plats Granted Final Approval (20.10.070) - None**

***5. Plat Amendment Request**

- a. Crestview Estates Subdivision Amended
KPB File 2004-146A1 [Imhoff / Switzer]
Recording No. HM 2005-33
Location: on Kia Lane and Cozy Cove Drive, off Skyline Drive, City of Homer

***6. Utility Easement Vacations - None**

***7. Commissioner Excused Absences**

- a. Syverine Abrahamson-Bentz, Anchor Point / Ninilchik
- b. Vacant, Ridgeway

***8. Minutes**

- a. March 25, 2019 Planning Commission Minutes

D. PUBLIC COMMENT/PRESENTATIONS/COMMISSIONERS

(Items other than those appearing on the agenda. Limited to five minutes per speaker unless previous arrangements are made.)

E. UNFINISHED BUSINESS

F. PUBLIC HEARINGS

- 1. Vacate a public easement in the City of Homer. Location and request: Vacate the 30' wide public access easement adjoining the north boundary of Tract A, A.A. Mattox 1958 Addition, Plat HM 3746, as granted on the public access easement recorded at Serial Number 2018-003011-0, Homer Recording District. The public access easement being vacated is unconstructed and located within the NW 1/4 SE 1/4 SE1/4 of Section 17, Township 6 South, Range 13 West, Seward Meridian, City of Homer, Kenai Peninsula Borough, Alaska. KPB File 2019-026V. Purpose as stated in petition: The easement is no longer necessary because Lot 8 and Tract A are being replatted into one lot. Petitioner: Echo Trading Company LLC of Homer, AK.

G. ANADROMOUS WATERS HABITAT PROTECTION DISTRICT (21.18) - None

H. VACATIONS NOT REQUIRING A PUBLIC HEARING - None

I. SPECIAL CONSIDERATIONS - None

J. SUBDIVISION PLAT PUBLIC HEARINGS

- 1. The Plat Committee will review 9 preliminary plat.

K. OTHER/NEW BUSINESS

L. ASSEMBLY COMMENTS

M. LEGAL REPRESENTATIVE COMMENTS

N. DIRECTOR'S COMMENTS

O. COMMISSIONER COMMENTS

P. PENDING ITEMS FOR FUTURE ACTION

Q. ADJOURNMENT

**MISCELLANEOUS INFORMATIONAL ITEMS
NO ACTION REQUIRED**

- Hearing Officer’s Decision and Order in the matter of Kenai Peninsula Borough Planning Commission’s Decision to Uphold the Plat Committee’s July 16, 2018 Conditional Approval of Sunville Acres Addition No. 2 Preliminary Plat (KPB File No. 2018-063)

NEXT REGULARY SCHEDULED PLANNING COMMISSION MEETING

The next regularly scheduled Planning Commission meeting will be held **Monday, April 22, 2019** in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley St, Soldotna, Alaska at **7:30 p.m.**

ADVISORY PLANNING COMMISSION MEETINGS

ADVISORY COMMISSION	MEETING LOCATION	DATE	TIME
Anchor Point	Anchor Point Chamber of Commerce	April 3, 2019	7:00 p.m.
Cooper Landing	Cooper Landing Community Hall	April 3, 2019	6:00 p.m.
Moose Pass	Moose Pass Community Hall	TBD	6:30 p.m.
Hope / Sunrise	Hope Social Hall	TBD	6:00 p.m.
The Kachemak Bay and Funny River Advisory Planning Commissions are inactive at this time.			

NOTE: Advisory planning commission meetings are subject to change. Please verify the meeting date, location, and time with the advisory planning commission chairperson. Chairperson contact information is on each advisory planning commission website, which is linked to the Planning Department website.

CONTACT INFORMATION

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Phone: 907-714-2215
 Phone: toll free within the Borough 1-800-478-4441, extension 2215
 Fax: 907-714-2378
 e-mail address: planning@kpb.us
 website: <http://www.kpb.us/planning-dept/planning-home>



Plat Committee Tentative Agenda

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

*Paulette Bokenko-Carluccio – City of Seldovia • Jeremy Brantley – Sterling
Cindy Ecklund – City of Seward • Franco Venuti – City of Homer • Paul Whitney – City of Soldotna
Alternates: Diane Fikes – City of Kenai*

**April 8, 2019
6:00 p.m.**

A. CALL TO ORDER

B. ROLL CALL

1. Election of Officers

C. APPROVAL OF AGENDA, EXCUSED ABSENCES, AND MINUTES

1. Agenda
2. Member/Alternate Excused Absences
3. Minutes
 - a. March 25, 2019 Plat Committee Minutes

D. PUBLIC COMMENT

(Items other than those appearing on the agenda. Limited to five minutes per speaker unless previous arrangements are made.)

E. SUBDIVISION PLAT PUBLIC HEARINGS

1. Troy's Camp
KPB 2019-022 [Seabright Surveying / Sorensen]
Location: on Mona Road and Dave Road, Fox River
Kachemak Bay APC
2. Oscar Munson No. 25
KPB 2019-025 [Geovera, LLC / Bell-Kelsey Revocable Trust, Raven Trust]
Location: on Ocean Drive Loop, off Lake Street, City of Homer
3. Homer Highlands
KPB File 2019-028 [Ability Surveys / Fordham]
Location: approximately 3 miles west of Basargin Road, Remote
Kachemak Bay APC
4. Anglers Acres Subdivision Shuey Addition
KPB File 2018-137 [McLane Consulting Group / Shuey]
Location: on Angler Drive, City of Kenai

- 5. Arnold Cohoe Beach Subdivision
KPB File 2019-023 [McLane Consulting Group / Robert J. Arnold Living Trust]
Location: on Cohoe Loop Road and Queque Avenue, Cohoe

- 6. Longmere Estates Subdivision Part 1 Schreiber Replat
KPB File 2019-017 [Segesser Surveys / Schreiber]
Location: on Lakeshore Drive, off the Sterling Highway, Sterling

- 7. Ravenwood Subdivision 2019 Replat
KPB File 2019-027 [Segesser Surveys / Kenai Peninsula Borough]
Location: on Pintail Avenue, Kalifornsky

- 8. Butler – Church Subdivision Galley Addition #2
KPB File 2019-021 [Johnson Surveying / Galley Living Trust]
Location: on Funny River Road and Lake Street, Funny River
Funny River APC

- 9. Lindow Subdivision #2
KPB File 2019-024 [Johnson Surveying / Lindow]
Location: on East Lake Avenue, Ridgeway

F. FINAL SUBDIVISION PLAT PUBLIC HEARING - None

G. OTHER / NEW BUSINESS

H. MISCELLANEOUS INFORMATION – NO ACTION REQUIRED

I. ADJOURNMENT

NEXT REGULARLY SCHEDULED MEETING

The next regularly scheduled Plat Committee meeting will be held **Monday, April 22, 2019** in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley, Soldotna, Alaska at **5:30 p.m.**

PLANNING DEPARTMENT

Phone: 907-714-2215 Fax: 907-714-2378

Phone: toll free within the Borough 1-800-478-4441, extension 2215

e-mail address: planning@kpb.us

web site: <http://www.kpb.us/planning-dept/planning-home>

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"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: City of Kenai Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: April 5, 2019
SUBJECT: **New City of Kenai Website**

The City of Kenai has a new website. The web address is: www.kenai.city.

I will click through pages relevant to the Planning and Zoning Commission as part of my Administrative Report, including links to City maps, the Planning and Zoning Commission webpage, and the Planning and Zoning Department webpage.



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Planning and Zoning Resolutions - First Quarter 2019

Amend KMC 14.20.010	201911 Amend Land Use Table in RR1 Zone	3/29/2019	Failed
Conditional Use Permit	201907 Bed & Breakfast and Guide Service	3/13/2019	Approved
Conditional Use Permit	201901 Boarding House	2/27/2019	Approved
Encroachment Permit	201904 L12, B3, VIP Ranch Estates Subd. Part 1	2/27/2019	Approved
Landscape/Site Plan	201906 Marijuana Product Manufacturing Facility	3/15/2019	Approved
Landscape/Site Plan	201903 Professional Offices/Coffee Shop	2/4/2019	Approved
Landscape/Site Plan	201902 Marijuana Retail Store	2/4/2019	Approved
Preliminary Plat	201910 L28, B12, Inlet Woods Subd. Part 1	3/27/2019	
Preliminary Plat	201910 L27, B12, Inlet Woods Subd. Part 1	3/27/2019	
Preliminary Plat	201830 Thompson Park Donaghe Replat	1/29/2019	Approved
Preliminary Plat	201830 Thompson Park Donaghe Replat	1/9/2019	Approved



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 www.kenai.city

MEMORANDUM

TO: Planning & Zoning Commission
THROUGH: Elizabeth Appleby, City Planner
FROM: Wilma Anderson, Planning Assistant
DATE: April 10, 2019

SUBJECT: Code Enforcement Action

2019 First Quarter Report

Planning & Zoning currently has nine active code cases:

Junk Vehicles	2
Junk Vehicles and Debris & Junk	2
Debris & Junk	0
Garbage	1
Building Code Violation	1
Miscellaneous Code Violation	3
Cases transferred to Legal Department/Civil Penalties being assessed.	0
TOTALS:	9

Code Enforcement Action during the months of January. – March, 2019:

Closed Cases	3
Opened Cases	7



CITY OF KENAI BUILDING PERMITS - FIRST QUARTER 2019

<i>Permit #:</i>	<i>Date</i>	<i>Parcel #</i>	<i>Owner</i>	<i>Address</i>	<i>Legal Description</i>	<i>Comments</i>	<i>Valuation</i>	<i>R/C</i>
B5435	1/10/2019		Danel Poulin	1406 Julie Anna Dr.	L3 Windhaven Est. Tapley Addn.		\$491,000	R
B5436	1/22/2019		Peninsula Investments LLC	14429 Kenai Spur Highway	L1 B1 Subdivision Bush Lanes	Marijuana Retail	\$10,000	C
B5438	1/28/2019		Byler Contracting	2725 VIP Drive #1	L1 B3 VIP Country Estate Sub. Part 4		\$175,200	R
B5439	1/28/2019		Byler Contracting	2725 VIP Drive #2	L1 B3 VIP Country Estates Sub Part 4		\$204,000	R
B5440	2/28/2019		Kenai Shopping Center, LLC	11312 Kenai Spur Hwy.	Lot 5A Etolin Subdivision	Structural Repairs	\$20,000	C
B5441	3/4/2019		Robert Bolle	300 Baker Street	GL Lot 121 Sec 31, T6N, R11W	Repair fire damage	\$40,000	R
B5443	3/29/2019		Timothy McIntyre	1220 Chinook Drive	L10 Oberts Pillars Subdivision	Extend Garage	\$33,000	R

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CITY OF KENAI

ORDINANCE NO. 3061-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.320- DEFINITIONS, 14.20.330- STANDARD FOR COMMERCIAL MARIJUANA ESTABLISHMENTS AND 14.22.010- LAND USE TABLE, TO INCORPORATE ONSITE CONSUMPTION OF MARIJUANA AT RETAIL MARIJUANA ESTABLISHMENTS INTO THE CITY OF KENAI'S CODE OF ORDINANCES.

WHEREAS, on November 4, 2014, the Alaskan voters passed Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana; and,

WHEREAS, on January 20, 2016 the City of Kenai enacted regulations governing commercial marijuana establishments in the City; and,

WHEREAS, on March 12, 2019 Lieutenant Governor Kevin Meyer signed into law new regulations from the Marijuana Control Board allowing retail marijuana stores to allow onsite consumption of marijuana under certain conditions; and,

WHEREAS, in order to enforce City regulations applicable to onsite consumption of marijuana at retail marijuana stores the City must amend its code related to commercial marijuana establishments and land use table; and,

WHEREAS, the amendments in this Ordinance will require retail marijuana store owners to obtain a conditional use permit from the City as well as obtain a state endorsement prior to allowing onsite consumption of marijuana.

Section 1. Amendment of Section 14.20.320 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.320 - Definitions, is hereby amended as follows:

14.20.320 Definitions.

(a) *General Interpretation.*

- (1) Words used in the present tense include the future tense.
- (2) The singular number includes the plural.
- (3) The word "person" includes a corporation as well as an individual.
- (4) The word "lot" includes the word "plot" or "parcel."

(5) The term “shall” is always mandatory.

(6) The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended,” “arranged” or “designed to be used or occupied.”

(b) Specific Definitions.

“Accessory Building” means a detached building or structure, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot as the main building or use, except as allowed by a conditional use permit. An accessory building shall be considered to be a part of the main building when joined to the main building by a common wall or when any accessory building and the main building are connected by a breezeway.

“Accessory Use” means a use customarily incidental and subordinate to the principal use of the land, building, or structure and located on the same lot or parcel of land.

“Administrative Official” means the person charged with the administration and enforcement of this chapter.

“Agricultural Building” means a building or structure used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation and which is not used by the public.

“Agriculture” means the science, art, and business of cultivating soil, producing crops, and raising livestock; farming.

“Airport” means a location where aircraft such as fixed-wing aircraft, helicopters, and blimps take off and land. Aircraft may be stored or maintained at an airport. An airport consists of at least one (1) surface such as a paved or gravel runway, a helicopter touchdown and lift off (TLOF) area, helipad, or water runway for aircraft takeoffs and landings, and often includes buildings such as control towers, hangars and terminal buildings.

“Airport Compatible Uses” means uses which include, but are not limited to: Hangars, Fixed Base Operators, Aircraft Repair and Manufacturing, Aircraft Sales, and other uses approved by the Ordinance of the City of Kenai, and the Federal Aviation Administration’s regulations, and compatible with the current Airport Master Plan, the Airport Layout Plan and the Comprehensive Plan.

“Alley” means a public way designed and intended to provide only a secondary means of access to any property abutting thereon.

“Alteration” means any change, addition, or modification in construction, location, or use classification.

“Animal Boarding” means any building or structure and associated premises in which animals are fed, housed, and/or exercised for commercial gain.

“Apartment House,” see “Dwelling, multiple-family.”

“Area, Building” means the total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of steps.

“Assemblage” means a large gathering of people for an event such as a concert, fair, or circus.

“Assisted Living” means a living arrangement in which people with special needs, especially seniors with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication.

“Automobile Sales” means the use of any building or structure and associated premises for the display and sale of new or used automobiles, panel trucks or vans, trailers, or recreation vehicles and including any warranty repair work and other repair service conducted as an accessory use.

“Automobile Service Station” means the use of any building or structure and associated premises or other space used primarily for the retail sale and dispensing of motor fuels, tires, batteries, and other small accessories; the installation and servicing of such lubricants, tires, batteries, and other small accessories; and such other services which do not customarily or usually require the services of a qualified automotive mechanic.

“Automobile Wrecking” means the dismantling of used motor vehicles or trailers or the storage or sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles.

“Automotive Repair” means the use of any building or structure and associated premises on which a business, service, or industry involving the maintenance, servicing, repair, or painting of vehicles is conducted or rendered.

“Bank” means any establishment or building or structure used for a financial institution that provides financial services for its clients or members. The term “bank” includes savings and loan.

“Bed and Breakfast” means a residential, owner-occupied dwelling in which rooms are rented to paying guests on an overnight basis with no more than one (1) meal served daily.

“Boarding House” means a dwelling where the principal use is a dwelling by the owner or keeper and where the owner or keeper provides lodging for three (3) or more persons who are not members of the owner’s or keeper’s family and the lodgers pay compensation to use one (1) or more rooms. The common parts of the building or structure are maintained by the owner or keeper who may also provide lodgers with some services, such as meals, laundry, and cleaning. Boarding houses are not motels or hotels and are not open to transient guests.

“Building” means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

“Building Code” means the building code and/or other building regulations applicable in the City.

“Building, Existing” means a building erected prior to the adoption of the ordinance codified in this chapter or one for which a legal building permit has been issued.

“Building Height” means the vertical distance from the “grade,” as defined herein, to the highest point of the roof.

“Building, Principal or Main” means a building or structure in which is conducted the principal or main use on the lot which said building is situated.

“Business/Consumer Services” means the provision of services to others on a fee or contract basis, such as advertising and mailing; building maintenance; employment service; management and consulting services; protective services; equipment rental and leasing; commercial research; development and testing; photo finishing; and personal supply services.

“Cabin Rentals” means the renting out of one (1) or more individual, detached dwelling units or buildings to provide overnight sleeping accommodations for a period of less than thirty (30) consecutive days.

“Cemetery” means any property used to inter the dead in buried graves or in columbarium, stacked vaults, or similar structures.

“Centerline” means the line which is in the center of a public right-of-way.

“Church” means a building or structure in which persons regularly assemble for worship, ceremonies, rituals, and education pertaining to a particular system of beliefs. The term “church” includes a synagogue or temple.

“City” means the City of Kenai, Alaska.

“Clinic” (or outpatient clinic or ambulatory care clinic) means a health care facility that is primarily devoted to the care of outpatients. Clinics can be privately operated or publicly managed and funded, and typically cover the primary health care needs of populations in local communities, in contrast to larger hospitals which offer specialized treatments and admit inpatients for overnight stays.

“Collector Street” means a street located and designed for the primary purpose of carrying through traffic and of connecting major areas of the City. Unless otherwise designated by the Commission, collector street shall be defined on the plan for streets and community facilities in the comprehensive development plan.

“College” means an educational institution providing postsecondary (after high school) education.

“Commercial Kennel” has the same meaning given in KMC [3.05.010](#).

“Commercial Marijuana Establishment” means any Retail Marijuana Store, Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, and Marijuana Testing Facility.

“Commercial Recreation” means a recreation facility operated as a business and open to the public for a fee.

“Commission” means the Kenai Planning and Zoning Commission.

“Communication Antenna” has the same meaning given in KMC [14.20.255](#).

“Communication Tower” has the same meaning given in KMC [14.20.255](#).

“Conditional Use” means a use which is permitted under the terms of this chapter provided that under the specified procedures, the Commission finds that certain conditions, specified in this chapter are fulfilled. Conditional uses are listed in the Land Use Table.

“Condominium” means a common interest ownership dwelling in which:

- (1) Portions of the real estate are designated for separate ownership;

(2) The remainder of the real estate is designated for common ownership solely by the owners of those portions;

(3) The undivided interests in the common elements are vested in the unit owners. In the Land Use Table (KMC [14.22.010](#)), “condominiums” shall be treated as two (2) or more family dwellings. For example, a four (4) unit condominium building would be treated as a four (4) family dwelling.

“Coverage” means that percentage of the total lot area covered by the building area.

“Crematory/Funeral Home” means building or structure used for preparation of the deceased for display and/or interment and may also be used for ceremonies connected with interment. Preparation may include cremation, which is the process of reducing dead bodies to basic chemical compounds in the form of gases and bone fragments. This is accomplished through burning—high temperatures, vaporization, and oxidation.

“Day Care Center” means an establishment where child care is regularly provided for children for periods of less than twenty-four (24) hours, including the building housing the facility and adjoining areas, and where tuition, fees, or other compensation for the care of the children is charged.

“Dormitory” means a building, whether public or private, associated with a school, college or university and designed, used, and arranged for private sleeping, studying, and living accommodation for students.

“Dwelling” means a building or any portion thereof designed or used exclusively for residential occupancy including one-family, two-family and multiple-family dwellings, but not including any other building wherein human beings may be housed.

“Dwelling, One-Family” means any detached building containing only one (1) dwelling unit.

“Dwelling, Two-Family” means any building containing only two (2) dwelling units.

“Dwelling, Multiple-Family” means any building containing three (3) or more dwelling units.

“Dwelling Unit” means one (1) or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one (1) family for living or sleeping purposes.

“Elementary School” means any school usually consisting of grades pre-kindergarten through grade 6 or any combination of grades within this range.

“Essential Service” means the erection, construction, alteration, or maintenance by public utility companies or municipal departments or commissions, of underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply, or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. This definition shall not be interpreted to include public buildings.

“Family” means any number of individuals living together as a single housekeeping unit in a dwelling unit.

“Farming” means a tract of land cultivated for the purpose of commercial agricultural production.

“Fence, Height” means the vertical distance between the ground directly under the fence and the highest point of the fence.

“Floor Area” means the total of each floor of a building within the surrounding outer walls but excluding vent shafts and courts.

“Fraternal Organization” means a group of people formally organized for a common object, purpose, or interest (usually cultural, religious or entertainment) that conducts regular meetings and has written membership requirements.

“Frontage” means all the property fronting on one (1) side of a street between intersection streets.

“Garage, Private” means an accessory building or any portion of a main building used in connection with residential purposes for the storage of passenger motor vehicles.

“Garage, Public” means any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other vehicles.

“Gas Manufacturer/Storage” means the surface use of lands used in the production, the mechanical transformation, or the chemical transformation of hydrocarbon gas and includes uses for gas conditioning/compressor stations. “Storage” means surface uses necessary for storage of produced or non-native natural gas.

“Governmental Building” means a building or structure owned and operated by any department, commission, or agency of the United States or of a state or municipality and used to conduct official business of government.

“Grade (Ground Level)” means the average level of the finished ground at the center of all walls to a building. In case walls are parallel to and within five (5) feet of a public sidewalk, the ground level shall be measured at the sidewalk.

“Greenhouse” means a building or structure, usually a glassed or clear plastic enclosure, used for the cultivation and protection of plants.

“Guest Room” means any room in a hotel, dormitory, boarding, or lodging house used and maintained to provide sleeping accommodations for one (1) or more persons.

“Guide Service” means any activity on any premises used for collecting or returning persons from recreational trips when remuneration is provided for the service.

“Gunsmith” means a person who repairs, modifies, designs, or builds firearms.

“High School” means a secondary school usually consisting of grades 9 through 12 or any appropriate combination of grades within this range.

“Home Occupation” means an accessory use carried out for remuneration by a resident in the resident’s dwelling unit.

“Hospital” means an institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured.

“Hotel” means a building or group of buildings containing more than five (5) guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

“Junkyard” means any space one hundred (100) square feet or more of any lot or parcel of land used for the storage, keeping, or abandonment of junk or waste material, including scrap metals or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or any parts thereof.

“Library” means a collection of sources, resources, and services, and the structure in which it is housed; it is organized for use and maintained by a public body, an institution, or a private individual.

“Licensed Premises For Commercial Marijuana Establishment” means any and all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a Commercial Marijuana Establishment license is issued, and used, controlled, or operated by the Commercial Marijuana Establishment to carry out the business for which it licensed.

“Loading Space” means an off-street space or berth on the same lot with a building or structure to be used for the temporary parking of commercial vehicles while loading or unloading merchandise or materials.

“Lodge” means a building or group of buildings containing five (5) or fewer guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

“Lot” means a parcel of land occupied or to be occupied by a principal use and having frontage on a public street.

“Lot, Corner” means a lot situated at the junction of, and bordering on, two (2) intersecting streets, two (2) platted rights-of-way, two (2) government easements, or any combination thereof.

“Lot Coverage” means that portion of the lot covered by buildings or structures that require a building permit.

“Lot Depth” means the horizontal distance separating the front and rear lot lines of a lot and at right angles to its width.

“Lot Line, Front-Corner Lot” means the shortest street line of a corner lot.

“Lot Line, Front-Interior Lot” means a line separating the lot from the street.

“Lot Line, Rear” means a line that is opposite and most distant from the front lot line, and in the case of irregular, triangular, or gore shaped lot, a line not less than ten feet (10') in length, within a lot, parallel to and at the maximum distance from the front lot line.

“Lot Line, Side” means any lot boundary line not a front lot line or a rear lot line.

“Lot Width” means the mean horizontal distance separating the side lot lines of a lot and at right angles to its depth.

“Manufactured Housing” means a dwelling unit that meets Department of Housing and Urban Development Standards for manufactured housing and is wider than sixteen feet (16'), has a roof pitch of 4:12 or greater with roofing and siding common to standard residential construction and is transported to the site and placed on a permanent foundation.

“Manufacturing/Fabricating/Assembly” means the mechanical or chemical transformation of materials or substances into new products including assembling of components parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

“Marijuana” means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. The term does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

“Marijuana Concentrate” means resin, oil, wax, or any other substance derived from the marijuana plant by any method which isolates the Tetrahydrocannabinol (THC)-bearing resins of the plant.

“Marijuana Cultivation Facility” means any entity with a state license registered to cultivate, prepare, and package marijuana and to sell marijuana to Marijuana Retail Facilities, Marijuana Products Manufacturing Facilities, Marijuana Testing Facilities, but not to consumers.

“Marijuana Cultivation Facility, Standard” means an entity registered to cultivate in an area greater than 500 square feet under cultivation, 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 Cultivation Facility, Limited” means an entity registered to cultivate in an area of 500 square feet or less of cultivation, 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 Products” means concentrated marijuana 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 Product Manufacturing Facility” means a state licensed fully enclosed secure indoor facility 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 Testing Facility” means a state licensed commercial marijuana testing facility that is registered to analyze and certify the safety and potency of Marijuana and Marijuana Products.

“Mini-Storage Facility” means a completely enclosed structure containing three (3) or more areas or rooms available for lease or rent for the purpose of the general storage of household goods, vehicles or personal property; where the lessee of the unit is provided direct access to deposit or store items and where vehicles do not fill the majority of the allowed storage space.

“Mobile Home” means a structure, which is built on a permanent chassis in accordance with Department of Housing and Urban Development Standards and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home is subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

“Mobile Home Park” means a site with required improvements and utilities for the long-term parking of mobile homes which may include services and facilities for the residents.

“Modular Home” means a dwelling constructed in modules or sections at a place other than the building site, built to conform to Title 4 of the Kenai Municipal Code, is transported to the site and then assembled and placed on a permanent foundation.

“Motel” means a group of one (1) or more detached or semi-detached buildings containing two (2) or more individual dwelling units and/or guest rooms designed for, or used temporarily by, automobile tourists or transients, with a garage attached or parking space conveniently located to each unit, including groups designated as auto courts, motor lodges, or tourist courts.

“Museum” means a building or structure that houses and cares for a collection of artifacts and other objects of scientific, artistic, or historical importance and makes them available for public viewing through exhibits that may be permanent or temporary.

“Necessary Aviation Facilities” means any air navigation facility, airport visual approach aid, airfield lighting and signage, meteorological device or any type of device approved by the Federal Aviation Administration (FAA), the location and height of which is fixed by its functional purpose.

“Nonconforming Lot” means a lot lawfully existing at the time this chapter became effective, which by reason of area or dimensions, does not meet the development requirements for the zone in which it is located.

“Nonconforming Structure” means a structure or portion thereof, lawfully existing at the time this chapter became effective, which by reason of its yards, coverage, height, or other aspects of design, does not meet the development requirements of this zone.

“Nonconforming Use” means a use of a structure of land, or of a structure and land in combination, lawfully existing at the time this chapter became effective, or established on the premises of a previous nonconforming use as specified in this chapter, which is not in conformity with the uses permitted in the zone in which it exists.

“Nursing, Convalescent or Rest Home” means a building or structure used as a residence for people who require constant nursing care and/or have significant deficiencies with activities of daily living.

“Office” means a room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

“Onsite Consumption Endorsement” means the state regulated consumption of certain marijuana products at or adjacent to a retail marijuana store by patrons of the commercial marijuana establishment.

“Park” means a tract of land, designated by a public entity for the enjoyment of the public and generally used for active and passive recreational activities.

“Parking, Public Lots” means a parking area available to the public, whether or not a fee for use is charged.

“Parking Space, Private” means any automobile parking space, excluding garages, not less than nine feet (9') wide and one hundred eighty (180) square feet in total area.

“Parking Space, Public” means an area of not less than one hundred eighty (180) square feet exclusive of drives or aisles giving access thereto in area accessible from streets and alleys for the storage of passenger motor vehicles operated by individual drivers.

“Person” means a natural person, his or her heirs, executors, administrators, or assigns, and also including firm, partnership, or corporation, or their successors and/or assigns or the agent of any of the aforesaid.

“Personal Services” mean establishments engaged in providing services involving the care of a person or his or her apparel.

“Planned Unit Residential Development” means an alternative method of development of a residential neighborhood under more flexible conditions than otherwise required in a specific zoning district.

“Principal Use” means the major or predominant use of a lot or parcel of land.

“Profession” means an occupation or calling requiring the practice of a learned art through specialized knowledge based on a degree issued by an institution of high learning, e.g., Doctor of Medicine.

“Property Owner” means the owner shown on the latest tax assessment roll.

“Public” means a place to which the public or a substantial group or persons has access and includes highway, rivers, lakes, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, hallways, lobbies and other parts of apartments houses and hotels not constituting rooms or apartments designed for actual residence.

“Recreation” means leisure activities sometimes requiring equipment and taking place at prescribed places, sites, parks, or fields. It can include active recreation, such as structured individual or team activities requiring the use of special facilities, courses, fields or equipment or passive recreation, such as activities that do not require prepared facilities such as wildlife and bird viewing, observing and photographing nature, picnicking, and walking.

“Recreational Vehicle” means a vehicular-type unit, primarily designed as temporary living quarters for recreational camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. Recreational vehicles include, but are not limited to, travel trailers, camping trailers, truck campers, and motor homes.

“Recreational Vehicle Park” means an area established by a conditional use permit for the parking of two (2) or more recreational vehicles on a temporary basis.

“Recreation or Youth Center” means a building, structure, athletic playing field, or playground, run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under 21 years of age.

“Restaurant” means an establishment where food and drink is prepared, served, and consumed primarily within the principal building.

“Retail Business” means establishments engaged in selling goods or merchandise to the general public for business or personal/household consumption and rendering services incidental to the sale of such goods.

“Retail Marijuana Store” means a state licensed entity registered to purchase marijuana from a marijuana cultivation facility, to purchase marijuana and marijuana products from a marijuana manufacturing facility, and sell marijuana and marijuana products to consumers.

“Secondary Use” means a use allowed on a lot or parcel of land only if there is also an allowed principal use on the property.

“Sign” means any words, letters, parts of letters, figures, numerals, phrases, sentences, emblems, devices, trade names, or trademarks by which anything is made known, such as are used to designate an individual, firm, association, corporation, profession, business, or a commodity or product, which are visible from any public street or highway and used to attract attention.

“Square Feet Under Cultivation” means an area of the licensed premises of a standard or limited cultivation facility that is used for growing marijuana, measured on the perimeter of the floor or growing space for marijuana “Square Feet Under Cultivation” does not include hallways, equipment storage areas, or other areas within the licensed premises that are not used for growing marijuana such as an office, or a processing or storage area.

“State Highway” means a right-of-way classified by the State of Alaska as a primary or secondary highway.

“Storage Yard” means a lot used primarily for the storage of operational vehicles, construction equipment, construction materials or other tangible materials and equipment.

“Street” means a public right-of-way used as a thoroughfare and which is designed and intended to provide the primary means of access to property abutting thereon.

“Structure” means that which is built or constructed, an edifice or a building of any kind, composed of parts joined together in some definite manner.

“Subsurface Extraction of Natural Resources” means removing valuable minerals or other geological materials from the earth, from an ore body, vein or (coal) seam. Materials recovered could include gas, oil, base metals, precious metals, iron, uranium, coal, diamonds, limestone, oil shale, rock salt and potash.

“Surface Extraction of Natural Resources” means removal of material, usually soil, gravel, or sand for use at another location.

“Taxidermy” means the act of mounting or reproducing dead animals, fish, and/or birds for display.

“Theater” means a building or structure, or part thereof, devoted to the indoor exhibition of motion pictures and/or of live dramatic, speaking, musical, or other presentations.

“Townhouse” means single-family dwelling units constructed in a series or group of two (2) or more units separated from an adjoining unit by an approved party wall or walls, extending from the basement of either floor to the roof along the linking lot line.

“Tree Nursery” means a place where trees/plants are propagated and grown to usable size.

“Use” means the purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied or maintained.

“Variance” means the relaxation of the development requirements of this chapter to provide relief when the literal enforcement would deprive a property owner of the reasonable use of his or her real property.

“Warehouse” means a building or structure used for the storage of goods, wares and merchandise that will be processed, sold or otherwise disposed of off the premises.

“Wholesale Business” means business conducted primarily for the purpose of selling wares or merchandise in wholesale lots to retail merchants for resale.

“Yard” means an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the same lot on which a building is situated.

“Yard, Front” means a yard extending across the full width of the lot between the front lot line of the lot and the nearest exterior wall of the building which is the nearest to the front lot line.

“Yard, Rear” means a yard extending across the full width of the lot between the most rear main building and the rear lot line.

“Yard, Side” means a yard on each side of a main building and extending from the front lot line to the rear lot line. The width of the required side yard shall be measured horizontally from the nearest point of a side lot line to the nearest part of the main building.

“Zoning Change” means the alteration or moving of a zone boundary; the reclassifica[-]tion of a lot, or parcel of land, from one zone to another; and the change of any of the regulations contained in this chapter.

“**Zoning Ordinance or Ordinances**” mean the zoning ordinance of the City of Kenai and Kenai Municipal Code Chapter [14](#).

Section 2. Amendment of Section 14.20.330 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, is hereby amended as follows:

14.20.330 Standards for ~~[C]Commercial [M]Marijuana [E]Establishments.~~

The purpose of this section is to establish general standards for commercial marijuana establishments.

(a) Commercial marijuana establishments and onsite consumption endorsements may be permitted or allowed with a conditional use permit under KMC [14.20.150](#), as provided in the City of Kenai’s land use table, KMC [14.22.010](#), and the provisions of this section.

(b) Applicants applying for a conditional use permit must include an area map drawn to scale indicating all land uses on other properties within a five hundred (500) foot proximity of the lot upon which the applicant is seeking a conditional use permit. This shall be in addition to the conditional use permit submission requirements in KMC [14.20.150](#).

(c) A public hearing shall be scheduled before the Planning and Zoning Commission to review the conditional use permit application once it has been deemed complete. The public hearing shall be scheduled in accordance with the requirements in KMC [14.20.280](#), except that notification shall be mailed to all real property owners on record on the Borough Assessor’s records within a five hundred (500) foot periphery of the parcel affected by the proposed action.

(d) The preparation, packaging, manufacturing, processing, and storing of all marijuana, marijuana concentrate or marijuana products must be conducted within a fully enclosed, secure indoor facility. The growing and cultivating of marijuana must be conducted within a fully enclosed, secure indoor facility or greenhouse with view-obscuring rigid walls, a roof and doors, unless a non-rigid greenhouse, or other structure, is specifically approved, in which case the cultivation must be enclosed by a sight-obscuring wall or fence at least six (6) feet high.

(e) All commercial marijuana establishments shall not emit an odor that is detectable by the public from outside the commercial marijuana establishment.

(f) No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:

(1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and

(2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.

(g) As provided in the Land Use Table, a person or licensee may apply for a conditional use permit to allow for a marijuana cultivation facility, standard, on lots of forty thousand (40,000) square feet or greater in size, and a marijuana cultivation facility, limited, on any size lot.

(h) A marijuana cultivation facility, standard, or a marijuana cultivation facility, limited, shall only be allowed on a lot which has an existing structure consistent with a principal permitted use.

(i) A marijuana cultivation facility located in an accessory building shall be subject to the setback provisions in KMC [14.24.020](#), Development Requirements Table. A person or licensee seeking relief from the provisions in the Development Requirements Table may apply for a variance subject to the provisions of KMC [14.20.180](#).

(j) A conditional use permit for onsite consumption of marijuana and/or certain marijuana products must be obtained, in addition to a state issued endorsement license, prior to operation of any onsite consumption in the City. The conditional use permit for onsite consumption must be separate from and in addition to any conditional use permit for the operation of a retail marijuana store. An onsite consumption conditional use permit will not be issued until a condition use permit for a retail marijuana store has been issued for the same location.

Section 3. Amendment of Section 14.22.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.22.010 – Land Use Table, is hereby amended as follows:

14.22.010 Land [U]Use [T]Table.

LAND USE TABLE

KEY: P = Principal Permitted Use
C = Conditional Use
S = Secondary Use
N = Not Permitted

NOTE: Reference footnotes on following pages for additional restrictions

ZONING DISTRICTS																	
LAND USES	A LI	C	R R	R R-1	R S	R S-1	R S-2	R U	C C	C G	IL	IH	E D	R	TS H	LC	CM U
RESIDENTIAL																	
One-Family Dwelling	N	C ¹ ₈	P	P	P	P	P	P	P ² ₁	S ¹	S ²	S ²	C ² ₂	P	P	P	S ¹ /C ₂₁
Two-, Three-Family Dwelling	N	C ¹ ₈	P	P	P	P	P	P	P ² ₁	S ¹	C	C	C ² ₂	P	P	P	S ¹ /C ₂₁
Four-Family Dwelling	N	C ¹ ₈	P	C ³ _{, 29}	P	N	N	P	P ² ₁	S ¹	C	C	C ² ₂	N	P	C	S ¹ /C ₂₁
Five-, Six-Family Dwelling	N	C ¹ ₈	C ³	N	P	N	N	P	P ² ₁	S ¹	C	C	N	N	P	C	S ¹ /C ₂₁
Seven- or More Family Dwelling	N	C ¹ ₈	C ³	N	C ³	N	N	P	P ² ₁	S ¹	C	C	N	N	P	C	S ¹ /C ₂₁
Mobile Home Parks ⁶	N	N	C	N	C	C	C	C	C	C	C	C	N	C	N	N	C
Planned Unit Residential Development ⁷	N	C ¹ ₈	C	C ² ₉	C	C	C	C	C	C	C	C	N	C	C	C	C
Townhouses ⁴	N	C ¹ ₈	C ³	C ³ _{, 29}	C ³	C ³	C ³	C ³	C	C	C	C	C ² ₂	C	C	C	C
Accessory Building on Parcel Without Main Building or Use (See KMC 14.20.200)	N	N	C	C	C	C	C	C	N	N	N	N	N	N	C	N	N

COMMERCIAL																	
Airport Compatible Uses	P	N	N	N	N	N	N	N	C	C	C	C	N	N	N	C	C
Automotive Sales	C	N	C	N	N	N	N	C	P	P	P	P	N	N	N	N	P
Automotive Service Stations	C	N	C	N	N	N	N	C	P	P	P	P	N	C	N	N	P
Banks	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Business/Consumer Services	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Commercial Recreation	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Guide Service	C	N	C	N	C	N	N	C	P	P	P	P	N	P	P	C	P
Hotels/Motels	C	N	C	N	C	N	N	C	P	P	P	C	N	C	P	C	P
Lodge	C	N	C	N	C	N	N	C	P	P	P	C	N	P	P	C	P
Marijuana Cultivation Facility, Limited ³⁰	N	N	C	C	C	C	C	C	N	C	C	C	N	N	N	C	N
Marijuana Cultivation Facility, Standard ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	N
Marijuana Product Manufacturing Facility ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	N	N
Marijuana Testing Facility ³⁰	N	N	N	N	N	N	N	N	C	C	P	P	N	N	N	C	C
Professional Offices	C	N	C	C ² ₉	C	N	N	P	P	P	P	P	N	C	P	P	P
Restaurants	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Retail Business	C	N ² ₆	C	N	C	N	N	C	P	P	P	P	S ² ₄	S ² ₄	C	C	P
Retail Marijuana Store ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	C
<u>Onsite Consumption Endorsment</u> ³¹	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>
Theaters	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Wholesale Business	C	N	C	N	C	N	N	C	C	P	P	P	N	S ² ₄	C	C	N

New Text Underlined; [DELETED TEXT BRACKETED]

INDUSTRIAL																	
Airports	C	P ₀ ²	C	N	C	N	N	C	C	C	C	C	N	C	N	N	C
Necessary Aviation Facilities	P	P	C	C	C	C	C	C	P	P	P	P	C	P	C	P	P
Automotive Repair	P	N	C	N	C	N	N	C	P	P	P	P	N	N	N	N	P
Gas Manufacturer/Storage	C ⁹	N	N	N	C	N	N	N	N	N	C ₉	C ₉	N	N	N	N	N
Manufacturing/Fabricating/Assembly	P	N	C	N	C	N	N	C	C	P	P	P	N	C	C	N	C
Mini-Storage Facility	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	C	C
Storage Yard	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	N	C
Warehouses	C	N	C	N	C	N	N	C	N	P	P	P	N	C	N	N	N
PUBLIC/INSTITUTIONAL																	
Assisted Living	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Churches*	N	C	P ₀ ¹	P ₀ ¹⁰	P ₀ ¹	P ₀ ¹	P ₀ ¹	P ₀ ¹	P ₀ ¹	P ₀ ¹	C	C	P	P ₀ ¹	P	P	P
Clinics	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	P	P
Colleges*	N	C	C	C ₉ ²	C	C	C	C	P	P	C	C	P	C	C	C	P
Elementary Schools*	N	C	C	C ₉ ²	C	C	C	C	P	P	C	C	P	C	C	C	P
Governmental Buildings	P	C	C	C ₉ ²	C	C	C	C	P	P	P	C	P	C	C	P	P
High Schools*	N	C	C	C ₉ ²	C	C	C	C	P	P	C	C	P	C	C	C	P
Hospitals*	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	C	P
Libraries*	N	C	C	C ₉ ²	C	C	C	C ₂ ¹	P	P	P	C	P	C	P	C	P
Museums	C	C	C	C ₉ ²	C	C	C	C	P	P	P	C	P	C	P	C	P

Parks and Recreation	N	P	C	C ² ₉	C	C	C	C	P	P	P	P	P	P	P	C	P
MISCELLANEOUS																	
Animal Boarding/Commercial Kennel ¹³	C	C	C	N	C	C	N	N	C	C	C	C	N	C	N	C	C
Assemblies ¹⁵ (Large: Circuses, Fairs, etc.)	P	C	C	N	C	C	C	C	P ¹ ₅	P ¹ ₅	P ¹ ₅	P ¹ ₅	P ¹ ₅	C	P	N	P ¹⁵
Bed and Breakfasts	N	C	C	C	C	C	C	C	C	C	C	C	N	P	C	C	P
Cabin Rentals	N	C	C	N	C	N	N	N	P	P	P	C	N	P	P	C	P
Cemeteries	P	C	C	N	C	N	N	N	N	C	C	C	N	C	C	N	N
Communications Towers and Antenna(s), Radio/TV Transmitters/Cell Sites** 28	C	P	C	N	C	C	C	C	P	P	P	P	P	C	C	C	C
Crematories/Funeral Homes	N	N	C	N	C	N	N	C	C	C	C	C	N	C	C	C	C
Day Care Centers ¹²	N	C	C	C ² ₉	C	C	C	C	P	P	P	C	C	C	C	P	P
Dormitories/Boarding Houses	N	C	C	N	C	C	C	P	P ² ₁	S	C	P	P ² ₃	C	C	C	P
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Farming/General Agriculture***	N	P	P	N	N	N	N	N	N	N	N	P	N	P	N	N	N
Fraternal Organizations/ Private Clubs/Social Halls and Union Halls	N	N	C	N	C	C	C	C	P	P	P	C	N	C	P	C	P
Greenhouses/Tree Nurseries ¹³	N	C	C	N	C	C	C	C	P	P	P	C	N	C	C	C	P
Gunsmithing, Taxidermy	N	N	C	N	C	C	C	C	P	P	P	P	N	C	P	P	P
Nursing, Convalescent or Rest Homes	N	N	C	N	C	C	C	C	P	P	C	C	C	C	C	C	P
Parking, Public Lots ¹²	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C

Personal Services ²⁵	N	C	C	N	C	C	C	C	P	P	P	P	C	C	P	P/C 27	P
Recreational Vehicle Parks	N	C	C	N	C	N	N	C	C	C	C	C	N	C	C	N	C
Subsurface Extraction of Natural Resources ¹⁶	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N	N	N
Surface Extraction of Natural Resources ¹⁷	C	C	C	N	C	N	N	C	N	C	C	C	N	C	N	N	N

* See 42 USCA Sec. 2000cc (Religious Land Use and Institutionalized Persons Act of 2000)

** See 42 Telecommunications Act of 1996, Sec. 704(a)

*** See, however, the limitations imposed under KMC [3.10.070](#)

Footnotes:

1 Allowed as a secondary use except on the ground floor of the part of the building fronting on collector streets and major highways. Commercial or industrial which falls under the landscaping/site plans requirements of KMC Chapter [14.25](#) shall include any secondary uses in the landscaping and site plans.

2 One (1) single-family residence per parcel, which is part of the main building.

3 Allowed as a conditional use, subject to satisfying the following conditions:

a The usable area per dwelling unit shall be the same as that required for dwelling units in the RS Zone;

b The site square footage in area must be approved by the Commission;

c Yards around the site, off-street parking, and other development requirements shall be the same as for principal uses in the RR Zone;

d Water and sewer facilities shall meet the requirements of all applicable health regulations;

e The proposed dwelling group will constitute a residential area of sustained desirability and stability, will be in harmony with the character of the surrounding neighborhood, and will not adversely affect surrounding property values;

f The buildings shall be used only for residential purposes and customary accessory uses, such as garages, storage spaces, and recreational and community activities;

g There shall be provided, as part of the proposed development, adequate recreation areas to serve the needs of the anticipated population;

h The development shall not produce a volume of traffic in excess of the capacity for which the access streets are designed;

i The property adjacent to the proposed dwelling group will not be adversely affected.

4 See "Townhouses" section.

5 See "Mobile Homes" section.

6 Allowed as a conditional use, subject to "Mobile Homes" section; and provided, that any mobile home park meets the minimum Federal Housing Authority requirements.

7 See "Planned Unit Residential Development" section.

8 Allowed as a conditional use; provided, that the proposed location and the characteristics of the site will not destroy the residential character of the neighborhood.

9 Allowed as a conditional use; provided, that all applicable safety and fire regulations are met.

10 Provided that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line.

11 Allowed as a conditional use; provided, that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line; and provided further, that the proposed location and characteristics of the use will not adversely affect the commercial development of the zone.

12 Allowed as a conditional use; provided, that the following conditions are met:

a The proposed location of the use and the size and characteristics of the site will maximize its benefit to the public;

b Exits and entrances and off-street parking for the use are located to prevent traffic hazards on public streets.

13 Allowed as a conditional use; provided, that setbacks, buffer strips, and other provisions are adequate to assure that the use will not be a nuisance to surrounding properties. The Commission shall specify the conditions necessary to fulfill this requirement. Animal boarding and commercial kennels require a kennel license (see KMC Chapter [3.15](#)).

14 Allowed as a conditional use; provided, that no indication of said use is evident from the exterior of the mortuary.

15 Allowed; provided, that the following conditions are met:

a An uncleared buffer strip of at least thirty (30) feet shall be provided between said use and any adjoining property in a residential zone.

b Exits and entrances and off-street parking for the use shall be located to prevent traffic hazards on the public streets.

16 See “Conditional Uses” section.

17 See “Conditional Use Permit for Surface Extraction of Natural Resources” section.

18 **Conditional use allowed only on privately held property.** Not allowed on government lands.

19 Reserved.

20 The airport related uses allowed under this entry are aircraft approach and departure zones pursuant to KMC [14.20.070\(a\)](#), except that for properties contained inside the airport perimeter fence or having access to aircraft movement areas, taxiways or parking aprons, FAA authorized uses are allowed.

21 Developments for use shall be the same as those listed in the Development Requirements Table for the RU/TSH Zones.

22 **Allowed as a conditional use in conjunction with a permitted use in the ED Zone.** For example, housing for teachers or students for a school in the zone.

23 **Allowed as an accessory use in conjunction with a permitted use in the ED Zone.** For example, a dormitory used to house students for a school or educational facility.

24 Retail businesses allowed as a secondary use in conjunction with the primary use (e.g., a gift shop or coffee shop within another business).

25 Art studios, barbers, beauticians, tattoo parlors, dressmakers, dry cleaners and self-service laundries, fitness centers, photographic studios, tailors, tanning salons and massage therapists.

26 Food services are allowed on a temporary or seasonal basis of not more than four (4) months per year.

27 Personal services not set forth in the below matrix are conditional uses.

Limited Commercial Zone		
Personal Services	Permitted (P)	Conditional Use (C)
Art Studios	X	

Limited Commercial Zone		
Personal Services	Permitted (P)	Conditional Use (C)
Barbers	X	
Beauticians	X	
Dressmakers	X	
Dry Cleaners		X
Fitness Centers	X	
Massage Therapist		X
Photographic Studios	X	
Self-Service Laundries		X
Tailors	X	
Tanning Salons	X	
Tattoo Parlors		X

28 Communications tower/antenna(s) allowed as a principal permitted (P) use if the applicable conditions set forth in KMC [14.20.255](#) are met or a conditional use (C) if the applicable conditions set forth in KMC [14.20.150](#) and [14.20.255](#) are met.

29 Use allowed only for those parcels that abut the Kenai Spur Highway. The access to any such parcel must be either from: (a) driveway access on the Kenai Spur Highway; or (b) driveway access from a dedicated right-of-way and that driveway access is not more than two hundred seventy-five (275) feet as measured from the constructed centerline of the Kenai Spur Highway to the center of the driveway access as shown on an as-built drawing/survey of the parcel.

30 See marijuana regulations, KMC [14.20.230](#)—Home Occupations, [14.20.320](#)—Definitions, [14.20.330](#)—Standards for Commercial Marijuana Establishments.

31 A conditional use permit for an onsite consumption endorsement can only be approved if the applicant has a current conditional use permit for a Retail Marijuana Store.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 4. Severability: That if any part or provision of this ordinance or application thereof to

any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 17th day of April, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: April 3, 2019
Enacted: April 17, 2019
Effective: May 17, 2019



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Scott Bloom, City Attorney

DATE: March 27, 2019

SUBJECT: **Ordinance No. 3061-2019 An Ordinance to Incorporate Onsite Consumption of Marijuana at Retail Marijuana Establishments into the City Of Kenai's Code of Ordinances**

Lieutenant Governor Kevin Myer recently signed into law State regulations allowing for onsite consumption of marijuana at retail marijuana stores. A separate endorsement license for this activity is required from the State. While there is an opportunity for the City to prohibit onsite consumption, this Ordinance permits the activity through a conditional use permit process. In order to accomplish this, the City's zoning code and land use table are proposed to be amended to include a definition of an onsite consumption endorsement, clarify that a conditional use permit separate from a conditional use permit for the retail facility is required, and provide where the business activity is allowed in the City. These changes can be found on pages 12, 16, 17 and 19.

The State regulations require an applicant to apply with the Marijuana Control Board for an onsite endorsement, with new application fees of \$1000, renewal fees of \$600, and license fees of \$2000. Once an endorsement is obtained (and a conditional use permit in Kenai), a retail marijuana store can sell marijuana and marijuana products, excluding concentrates, to customers in a consumption area separated from the rest of the store. For consumption, only one gram may be sold to a person per day, or edible products containing 10 mg or less of THC. Food and beverages **not** containing alcohol or marijuana may also be sold at the location. Tobacco cannot be consumed in consumption areas, and only product purchased at the location can be consumed. Drunk and intoxicated people are prohibited from entering or remaining onsite. "Intoxicated" is defined as "intoxicated from the use of a drug or alcohol." (I recognize this is not a very informative definition) Consumption areas are required to have smoke free areas for employees to monitor the consumption area, a ventilation system that eliminates odor, security measures and procedures for handling unconsumed product. Outdoor consumption areas are contemplated in the regulations with additional requirements that the activity must be compatible with surrounding uses, there must be sight obscuring borders, and there is allowance for objection by property owners within 250 feet and local government objection.

Your consideration is appreciated.



Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Debbie Morgan
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor *AS*
465.4081

DATE: March 12, 2019

RE: Filed Permanent Regulations: Marijuana Control Board
Marijuana Control Board: Marijuana Onsite Consumption (3 AAC 306.370)

Attorney General File: JU2017200548
Regulation Filed: 3/12/2019
Effective Date: 4/11/2019
Print: 230, July 2019

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached 17 pages of regulations, dealing with onsite consumption endorsements for marijuana licenses, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its December 20, 2018 meeting, under the authority of AS 17.38.121 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Marijuana Control Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 1/8/19



Erika McConnell, Director
Alcohol and Marijuana Control Office

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

MARCH 12, 20 19 at 12:33 PM., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: April 11, 2019.

Register: 230, July 2019.

3 AAC 306.015(d) is amended to read:

(d) The board will impose other conditions or restrictions on a license or endorsement issued under this chapter when it finds that it is in the interests of the public to do so.

(Eff. 2/21/2016, Register 217; add'l am 2/21/2016, Register 217; am 2/21/2019,

Register 229) am 4/11/2019, Register 230

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.025 is amended to read:

3 AAC 306.025. Application procedure. (a) An applicant must initiate a new marijuana establishment license or endorsement application on a form the board prescribes, using the board's electronic system.

(b) After initiating a new marijuana license or endorsement application, the applicant must give notice of the application to the public by

(1) posting a copy of the application, on the form the board prescribes, for 10 days at

(A) the location of the proposed licensed premises; and

(B) one other conspicuous location in the area of the proposed premises;

(2) publishing an announcement once a week for three consecutive weeks in a newspaper of general circulation in the area; in an area where no newspaper circulates, the applicant must arrange for broadcast announcements on a radio station serving the local area

where the proposed licensee seeks to operate twice a week for three successive weeks during triple A advertising time; the newspaper or radio notice must state

(A) the name of the applicant;

(B) the name and location of the proposed premises;

(C) the type of license **or endorsement** applied for along with a citation to a provision of this chapter authorizing that type of license **or endorsement**; and

(D) a statement that any comment or objection may be submitted to the board; and

(3) submitting a copy of the application on the form the board prescribes to

(A) the local government; and

(B) any community council in the area of the proposed licensed premises.

(c) After the applicant completes the notice requirements in (b) of this section and submits each remaining application requirement listed in 3 AAC 306.020, the applicant must pay the application and license fees set out in 3 AAC 306.100. The notice requirements in (b) of this section must be given within the 90 days preceding the submittal of all application requirements listed in 3 AAC 306.020 and the application and license fee.

(d) When the director receives an application for a marijuana establishment license **or endorsement**, the director shall determine if the application is complete. Any application for a marijuana establishment license **or endorsement** that the director receives without the application and license fee is incomplete. If the director determines the application is complete, the director shall immediately give written notice to;

(1) the applicant;

(2) the local government with jurisdiction over the applicant's proposed licensed premises;

(3) the community council if the proposed licensed premises are located within the boundary of a community council established by municipal charter or ordinance; and

(4) any nonprofit community organization that has requested notification in writing.

(e) If an application for a marijuana establishment license **or endorsement** is incomplete, the director shall notify the applicant by electronic mail at the address provided by the applicant and shall either

(1) return an incomplete application in its entirety; or

(2) request the applicant to provide additional identified items needed to complete the application.

(f) When the director informs an applicant that its application is incomplete as provided in (e) of this section, the applicant must complete the application not later than 90 days after the date of the director's notice. If an applicant fails to complete its application during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana establishment license **or endorsement**.

(g) The director may, not less than 90 days after initiation of an application, inform an applicant by electronic mail at the address provided by the applicant that missing application requirements listed in 3 AAC 306.020 must be submitted within 90 days. If an applicant fails to submit all missing application requirements during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana

establishment license. (Eff. 2/21/2016, Register 217; am 12/28/2017, Register 224;

am 2 / 21 / 2019 , Register 229 ; am 4 / 11 / 2019 , Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.060 is amended to read:

3 AAC 306.060. Protest by local government. (a) Not later than 60 days after the director sends notice of an application for a new marijuana establishment license, a new onsite consumption endorsement, renewal of a marijuana establishment license, renewal of an onsite consumption endorsement, license conversion, or transfer of a marijuana establishment license to another person, a local government may protest the application by sending the director and the applicant a written protest and the reasons for the protest. The director may not accept a protest received after the 60-day period. If a local government protests an application for a new or renewal license, a new or renewal onsite consumption endorsement, for a license conversion, or for a transfer of a license to another person, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(b) A local government may recommend that the board approve an application for a new license, a new onsite consumption endorsement, renewal of a license, renewal of an onsite consumption endorsement, license conversion, or transfer of a license to another person subject to a condition. The board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable. If the board imposes a condition a local government recommends, the local government shall

assume responsibility for monitoring compliance with the condition unless the board provides otherwise.

(c) If a local government determines that a marijuana establishment has violated a provision of AS 17.38, this chapter, or a condition the board has imposed on the licensee, the local government may notify the board. Unless the director finds that the local government's notice is arbitrary, capricious, and unreasonable, the director shall prepare the determination as an accusation against the licensee under AS 44.62.360 and conduct proceedings to resolve the matter as provided under 3 AAC 306.820. (Eff. 2/21/2016, Register 217; am 2/21/2019, Register 229 ; am 4/11/2019, Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.100 is amended to read:

3 AAC 306.100. Fees; refund. (a) The non-refundable application fee for a new marijuana establishment license, an application for license conversion, or an application to transfer a license to another person is \$1,000. **The non-refundable application fee for a new onsite consumption endorsement is \$1,000.**

(b) The non-refundable application fee for a license renewal application is \$600. If a renewal application is late as provided under 3 AAC 306.035(e), an additional non-refundable late renewal application fee is \$1,000. **The non-refundable application fee for renewal of an onsite consumption endorsement is \$600.**

(c) The non-refundable fee to request board approval of a change in a licensed marijuana establishment's business name, ownership, licensed premises diagram, operating plan, or proposed new marijuana product is \$250. A change fee does not apply to an application for transfer of a license or a transfer of controlling interest to another person.

(d) The annual license **or endorsement** fee, to be paid with each application for a new marijuana establishment facility license **or endorsement** and each license **or endorsement** renewal application is

- (1) for a retail marijuana store license, \$5,000;
- (2) for a limited marijuana cultivation facility license, \$1,000;
- (3) for a marijuana cultivation facility license, \$5,000;
- (4) for a marijuana concentrate manufacturing facility license, \$1,000;
- (5) for a marijuana product manufacturing facility license, \$5,000;
- (6) for a marijuana testing facility license, \$1,000;

(7) for an onsite consumption endorsement to a retail marijuana store license, \$2,000.

(e) The fee for a marijuana handler permit card is \$50.

(f) If the board denies an application for a license **or endorsement**, or for renewal of a license **or endorsement**, the board will refund the annual license **or endorsement** fee. The board will not refund a license **or endorsement** fee after the license **or endorsement** has been issued.

(g) Processing fees for late renewal after failure to pay taxes are as follows:

(1) if a licensee pays its delinquent tax after a local government protests renewal of the license, but before the board denies license renewal, \$200;

(2) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before a hearing officer is appointed to hear the applicant's appeal, \$500;

(3) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before the administrative hearing begins, \$5,000;

(4) if a licensee pays its delinquent tax after an administrative hearing that results in a hearing officer recommendation to deny the license renewal, \$10,000.

(h) The fee for a second or subsequent inspection for a new marijuana establishment is \$500. The fee applies to an inspection requested after a marijuana establishment fails a preliminary inspection, and is not issued a license. The director may waive the fee upon submission of a written request. (Eff. 2/21/2016, Register 217; am 7/19/2017, Register 223; am 8/11/2018, Register 227; am 2 / 21 / 2019 , Register 229 ; am 4 / 11 / 2019 ,

Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.110. Endorsements generally. (a) An endorsement expands the boundaries of a licensed premises or the authorized activities of the licensed business.

(b) Only the board may issue an endorsement.

(c) An endorsement is valid only in conjunction with a license. An endorsement may only be transferred to another person if the license for which the endorsement was issued is also transferred to that person. An endorsement expires if the license expires or the license is

revoked. An endorsement is suspended if the license is suspended. (Eff. 4 / 11 / 2019,

Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.200 is amended to read:

3 AAC 306.200. Local options. (a) If a majority of the persons voting on the question vote to approve the option, or if a local government's assembly or city council passes an ordinance to the same effect, the local government shall adopt a local option to prohibit

- (1) the sale or importation for sale of marijuana and any marijuana product;
- (2) the operation of any marijuana establishment, including one or more of the

following license or endorsement types:

- (A) a retail marijuana store;
- (B) a marijuana cultivation facility;
- (C) a marijuana product manufacturing facility;
- (D) a marijuana testing facility;[.]

(E) an onsite consumption endorsement to a marijuana retail store license;

(3) specific operational characteristics of an onsite consumption endorsement to a marijuana retail store license, including consumption by smoking or vaping, or outdoor consumption.

(b) A ballot question to adopt a local option under this section must at least contain language substantially similar to: "Shall (name of local government) adopt a local option to prohibit (local option under (a) of this section)? (yes or no)."

(c) The ballot for an election on the options set out in (a)(2) of this section must include a brief explanation of the activity that each license or endorsement type on the ballot may carry out.

(d) If a local government dissolves under AS 29.06.450, any marijuana establishment license issued to that local government expires when the local government dissolves.

(e) A local government may not prohibit the personal use and possession of marijuana and marijuana products as authorized under AS 17.38.020.

(f) Nothing in 3 AAC 306.200 - 3 AAC 306.260 precludes a local government from applying for a marijuana establishment license or endorsement under other provisions of this chapter. (Eff. 2/21/2016, Register 217; am 4 / 11 / 2019 , Register 230)

Authority:	AS 17.38.020	AS 17.38.200	AS 17.38.900
	AS 17.38.190	AS 17.38.210	

3 AAC 306.250 is amended to read:

3 AAC 306.250. Effect on licenses of restriction on sale. If a majority of the voters vote under 3 AAC 306.200(a) to prohibit sale of marijuana and marijuana products or the operation of marijuana establishments, or if the assembly or city council passes an ordinance to the same effect, the board will not issue, renew, or transfer to another person a license for a marijuana establishment, or issue or renew an endorsement, with premises located within the boundary of the local government. A license for a marijuana establishment or endorsement

within the boundary of the local government is void 90 days after the results of the election are certified, or after the effective date of an ordinance to the same effect if the local government opted out by ordinance. A license or endorsement that expires during the 90 days after the certification of a local option election, or during the period of time between passage of an ordinance to the same effect and the effective date of that ordinance, may be extended until it is void under this section, by payment of a prorated portion of the annual license or endorsement fee. (Eff. 2/21/2016, Register 217, am 7/27/2017, Register 223; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.020 AS 17.38.200 AS 17.38.900
AS 17.38.190 AS 17.38.210

3 AAC 306.310(b) is amended to read:

(b) A licensed retail marijuana store may not

(1) conduct business on or allow a consumer to access the retail marijuana store's licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day;

(2) allow a person to consume marijuana or a marijuana product on the retail marijuana store's licensed premises, except as provided in 3 AAC 306.305(a)(4);

(3) offer or deliver to a consumer, as a marketing promotion or for any other reason,

(A) free marijuana or marijuana product, including a sample; or

(B) alcoholic beverages, free or for compensation; or[.]

(4) allow intoxicated or drunken persons to enter or to remain on the licensed premises.

(Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.355 is amended to read:

3 AAC 306.355. Limit on quantity sold. (a) A retail marijuana store may not sell to any one person per day[IN A SINGLE TRANSACTION]

- (1) more than one ounce of usable marijuana;
- (2) more than seven grams of marijuana concentrate for inhalation, or
- (3) marijuana or marijuana products if the total amount of marijuana, marijuana

products, or both marijuana and marijuana products sold contains more than 5,600 milligrams of THC.

(b) These limits include marijuana or marijuana product sold for onsite consumption under 3 AAC 306.370(a)(2). (Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores. (a)

Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved onsite consumption endorsement is authorized to

(1) sell marijuana and marijuana products, excluding marijuana concentrates, to patrons for consumption on the licensed premises at the time of purchase only in an area designated as the marijuana consumption area and separated from the remainder of the premises, either by a secure door and having a separate ventilation system, or by being outdoors in compliance with (c)(4) below;

(2) sell for consumption on the premises

(A) marijuana bud or flower in quantities not to exceed one gram to any one person per day;

(B) edible marijuana products in quantities not to exceed 10 mg of THC to any one person per day; and

(C) food or beverages not containing marijuana or alcohol; and

(3) allow a person to remove from the licensed premises marijuana or marijuana product that has been purchased on the licensed premises for consumption under this section, provided it is packaged in accordance with 3 AAC 306.345.

(b) A licensed retail marijuana store with an approved onsite consumption endorsement may not

(1) sell marijuana concentrate for consumption in the marijuana consumption area or allow marijuana concentrate to be consumed in the marijuana consumption area;

(2) allow any licensee, employee, or agent of a licensee to consume marijuana or marijuana product, including marijuana concentrate, during the course of a work shift;

(3) allow a person to consume tobacco or tobacco products in the marijuana consumption area;

(4) allow a person to bring into or consume in the marijuana consumption area any marijuana or marijuana product that was not purchased at the licensed retail marijuana store;

(5) sell, offer to sell, or deliver marijuana or marijuana product at a price less than the price regularly charged for the marijuana or marijuana product during the same calendar week;

(6) sell, offer to sell, or deliver an unlimited amount of marijuana or marijuana product during a set period of time for a fixed price;

(7) sell, offer to sell, or deliver marijuana or marijuana product on any one day at prices less than those charged the general public on that day;

(8) encourage or permit an organized game or contest on the licensed premises that involves consuming marijuana or marijuana product or the awarding of marijuana or marijuana product as prizes; or

(9) advertise or promote in any way, either on or off the premises, a practice prohibited under this section.

(c) A marijuana consumption area shall have the following characteristics:

(1) the consumption area shall be isolated from the other areas of the retail marijuana store, separated by walls and a secure door, and shall have access only from the retail marijuana store;

(2) a smoke-free area for employees to monitor the marijuana consumption area;

(3) a ventilation system that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line;

(4) if outdoors, be found by the board to be compatible with uses in the surrounding area through evaluation of

(A) neighboring uses;

(B) the location of air intake vents on neighboring buildings;

(C) a sight-obscuring wall or fence around the outdoor marijuana consumption area;

(D) objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater; and

(E) any other information the board finds relevant.

(d) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the documents and endorsement fee set out in this section, which must include

(1) the applicant's operating plan, in a format the board prescribes, describing the retail marijuana store's plan for

(A) security, in addition to what is required for a retail marijuana store, including:

(i) doors and locks;

(ii) windows;

(iii) measures to prevent diversion; and

(iv) measures to prohibit access to persons under the age of 21;

(B) ventilation. If consumption by inhalation is to be permitted, ventilation plans must be

(i) signed and approved by a licensed mechanical engineer;

(ii) sufficient to remove visible smoke; and

(iii) consistent with all applicable building codes and ordinances;

(C) monitoring overconsumption;

(D) unconsumed marijuana, by disposal or by packaging in accordance with 3 AAC 306.345; and

(E) preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for onsite consumption;

(2) the applicant's detailed diagram of the marijuana consumption area which must show the location of

(A) the licensed premises of the retail marijuana store;

(B) serving area or areas;

(C) ventilation exhaust points, if applicable;

(D) the employee monitoring area;

(E) doors, windows, or other exits; and

(F) access control points;

(3) the title, lease, or other documentation showing the applicant's sole right of possession of the proposed marijuana consumption area, if the area is not already part of the approved licensed premises for the retail marijuana store;

(4) an affidavit that notice of an outdoor marijuana consumption area has been mailed to property owners, residents, and occupants of properties within 250 linear feet of the boundaries of the property on which the onsite consumption endorsement is proposed, or the notification distance required by the local government, whichever is greater.

(e) The retail marijuana store holding an onsite consumption endorsement under this chapter shall

(1) destroy all unconsumed marijuana left abandoned or unclaimed in the marijuana consumption area in accordance with the operating plan and 3 AAC 306.740;

(2) monitor patrons in the marijuana consumption area at all times, specifically for overconsumption;

(3) display all warning signs required under 3 AAC 306.360 and 3 AAC 306.365 within the marijuana consumption area, visible to all consumers;

(4) provide written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in the marijuana consumption area at no cost to patrons;

(5) package and label all marijuana or marijuana product sold for consumption on the premises as required in 3 AAC 306.345; and

(6) comply with any conditions set by the local government or placed on the endorsement by the board.

(f) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license. (Eff. 4 / 11 / 2019 , Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.990(b) is amended to add the following subsections:

(41) “drunken person” has the meaning given in AS 04.21.080(b)(9);

(42) “freestanding” has the meaning given in AS 18.35.301(i)(1);

(43) “intoxicated” has the meaning given in AS 11.81.900(b)(34);

(44) “marijuana consumption area” means a designated area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement, where marijuana and marijuana products, excluding marijuana concentrates, may be consumed.

(45) “retail marijuana store premises” means an area encompassing both the retail marijuana store and any marijuana consumption area.

(46) “sight-obscuring wall or fence” means a wall or fence, including any gates, constructed of solid material and a minimum of six feet in height. (Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217; am 10/11/2017, Register 224; am 8/11/2018, Register 227; am 4 / 11 / 2019 , Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: February 28, 2019

File No.: JU2017200548

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Marijuana Control Board:
Marijuana Onsite Consumption
(3 AAC 306.370)

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations implement standards for onsite consumption of marijuana (excluding concentrates) in a freestanding licensed retail marijuana store with an endorsement. An endorsement is not a separate license for a retail marijuana store; it is a separate authorization on top of a retail marijuana store license.

The subject of these regulations was considered by the board for approximately two years (and 11 public meetings). Our review addresses whether the procedural steps were followed and whether the regulations are consistent with the authorizing statute and reasonably necessary to carry out its purpose. AS 44.62.030 and 44.62.060 (review of regulations for legality, constitutionality, and consistency with other regulations). We also address federal law in relation to the proposed regulations. AS 44.62.020 (“To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.”) *Davis v. State*, 235 P.3d 1017, 1020 (Alaska App. 2010); *Beran v. State*, 705 P.2d 1280, 1287 (Alaska App. 1985).

Procedural steps. The proposed regulations were published on August 23, 2018; the notice stated the board was considering regulations for onsite consumption endorsements for retail marijuana establishments. The board accepted written and oral comments, with oral comments occurring at a hearing on December 19, 2018. The regulations were adopted by the Marijuana Control Board after the close of the public comment period.

The August 23, 2018 public notice gives notice that the board would consider onsite marijuana consumption endorsements for retail marijuana establishments. The board took written and oral comments. The board adopted the regulation at its December 20, 2018 meeting. Further, the public notice and the January 8, 2019 certification of adoption order states that this action is

not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Consistency with authorizing statute. The board is authorized to propose and adopt regulations. Further, while marijuana consumption “in public” is illegal (AS 17.38.040) consumption within regulated, licensed premises is anticipated; the board has statutory authority to make changes to the area of a licensed premises “necessary to ensure control over the sale and consumption of marijuana on the premises.” AS 17.38.121(c). Under current regulation, “in public” does not “include an area on the premises of a licensed retail marijuana store designated for onsite consumption.” 3 AAC 306.990(a)(5)(C). The board further provides in these regulations that marijuana consumption is limited to a “marijuana consumption area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement.” 3 AAC 306.990(b)(44).

Consumption of marijuana in a licensed premises excludes marijuana concentrates (3 AAC 306.990(b)(44)), but envisions that some consumption may be through smoking marijuana or a marijuana product. Accordingly, we considered AS 18.35.301, which addresses public health law by prohibiting smoking tobacco in certain places, but the statute provides an exception for smoking “in an establishment licensed under AS 17.38 that is freestanding if the smoking is in accordance with regulations adopted by the Marijuana Control Board created under AS 17.38.080.” AS 18.35.301(h)(3). “Freestanding” means a building that is not supported by another structure and does not share ventilation or internal airspace with an adjoining structure and smoke from the building cannot travel into the adjoining structure. AS 18.35.301(i)(1). The regulations proposed here adopt this definition of “freestanding” in 3 AAC 306.990(b)(42).

In short, we find that the state statutes provide the board with necessary regulatory authority, and anticipate onsite consumption of marijuana, in a freestanding building.

Reasonably necessary to carry out the statutory purpose. Here we consider if the regulation is reasonable and not arbitrary. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971). Initially we note that the board considered the issue of onsite consumption for approximately two years, including approximately 11 meetings of substantive discussion about onsite consumption. The result is a detailed regulation, 3 AAC 306.370, onsite consumption endorsement for retail marijuana stores, to set the standards for onsite consumption. We are confident the record reflects that the board engaged in reasoned decision making. *See, Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97 (Alaska 2015).

Specifically, the section limits consumption endorsements to stores that are freestanding, and where not otherwise prohibited by local or state law. 3 AAC 306.370(a). A marijuana store with a consumption endorsement is authorized to sell marijuana products including limited quantities of bud or flower or products not to exceed 10 mg of THC and *not including concentrates*, for consumption in a designated area that is separated from the rest of the store by a secure door and having a separate ventilation system or that is outdoors. 3 AAC 306.370(a)(1) and (2). The store may sell food or beverages not containing marijuana or alcohol (3 AAC 306.370(a)(2)(C)) and may allow customers to take away from the premises product that they

have purchased for consumption on the premises so long as it is packaged properly. 3 AAC 306.370(a)(3). The section provides that a store with an endorsement may not:

- (1) sell concentrate for consumption in the consumption area or allow it to be consumed in the consumption area;
- (2) allow consumption by employees while on the job;
- (3) allow tobacco consumption;
- (4) allow offsite purchases to be consumed in the consumption area;
- (5) offer “happy hour” type discounts;
- (6) offer “all-you-can-eat” type deals;
- (7) offer “in-house” type discounts;
- (8) offer or encourage games or contests that involve marijuana consumption or awarding of marijuana as prizes; or
- (9) advertise any prohibited practice, whether on or off the premises.

In addition, this section sets out the physical characteristics of a marijuana consumption area. 3 AAC 306.370(c). It must be accessible only from inside the store but must be isolated from the rest of the store, have a smoke-free area from which employees can monitor the consumption area, and have a ventilation system that directs air outside and removes visible smoke and odor at the property line. 3 AAC 306.370(c)(1)-(3). If the consumption area is outdoors, it must be found by the board to be compatible with uses in the surrounding area. 3 AAC 306.370(c)(4). This paragraph requires at least the consideration of a sight-obscuring wall or fence around the area and consideration of the objections of neighbors.

Obtaining an endorsement for onsite consumption requires an applicant to hold a license for a retail marijuana store. To apply for an endorsement to allow onsite consumption on the licensed premises, the applicant must show plans for security, ventilation, monitoring consumption, disposition of unconsumed marijuana, and preventing introduction of product not purchased onsite. 3 AAC 306.370(d)(1). In addition, the application must include a detailed diagram of the consumption area, ventilation exhaust points, the employee monitoring area, and access control points, as well as proof of possession of the property and proof that notice of any outdoor consumption area has been given to nearby property owners. 3 AAC 306.370(d)(2)-(4). Subsection (c) requires an endorsement holder to destroy all unconsumed product left by customers, monitor consumption, display warning signs required of stores, provide dosage and safety information for each product that is sold for consumption, ensure that all product is packaged properly, and comply with all conditions set by local government or the board. Finally, onsite endorsements must be renewed annually. 3 AAC 306.370(f).

Local governments can adopt a local option to prohibit onsite consumption endorsements, just as they can now opt out of specific license types (stores, cultivation facilities, manufacturing facilities and testing facilities) (3 AAC 306.200(a)(2)); with the proposed amendments, they could also opt to prohibit specific operational characteristics of an onsite consumption endorsement, including by smoking or vaping, or consuming outdoors. 3 AAC 306.200(a)(3); 3

AAC 306.250. Also, these proposed amendments would allow a local government to hold an endorsement if it has a retail store license. 3 AAC 306.200(f).

In our view, the regulations are reasonably necessary to assure onsite consumption is retained in the licensed premises of a freestanding building.

Federal law. Next, we address whether the regulations are problematic under federal law. Under Alaska law, some commercial marijuana activity is authorized under AS 17.38, including onsite consumption on a licensed premises; for the reasons explained above these regulations are authorized by state law. But marijuana cultivation, use, and possession remains illegal under federal law. The regulations cannot resolve this conflict. Previously, the federal government issued guidance for states with legalized marijuana suggesting that the federal government would be more inclined to leave enforcement of criminal law applicable to commercial marijuana to states where the state has a robust regulatory system.¹ Accordingly, our state's marijuana regulation has been developed with attention to former key federal guidance, including regulatory action to ensure safe and clear packaging, regulations to ensure marijuana is not accessible to persons under age, and robust vetting requirements for licensees. The current regulations appear to establish robust requirements for onsite consumption designed to ensure limited onsite use, and with restrictions (such as requirements for security) designed to ensure that marijuana consumption occurs only by those of legal age on a designated area of a licensed premise, remains on the premise, and includes only consumption of marijuana purchased at the licensed premise. Accordingly, we believe that the board has established restrictions to ensure compliance with state law.

SRP:lbp

cc: Erika McConnell, Director
Marijuana Control Board
Department of Commerce, Community, and Economic Development

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¹ James M. Cole, Deputy Attorney General, U.S. Dep't of Justice, *Memorandum for All United States Attorneys, Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013; later withdrawn, Memorandum from Attorney General Jefferson B. Sessions III to All U.S. Attorneys (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.



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MEMORANDUM

TO: City of Kenai Planning and Zoning Commission
FROM: Elizabeth Appleby, City Planner
DATE: April 5, 2019
SUBJECT: **Informational Item – Onsite Marijuana Consumption**

Attached as an informational item is Ordinance 3061-2019 and other background documents. This ordinance and the background materials were introduced to the Kenai City Council. Ordinance 3061-2019 addresses the recent State regulations allowing for on-site consumption at retail marijuana stores; there are currently four permitted commercial marijuana retail stores in the City. Ordinance 3061-2019 was referred to the Planning and Zoning Commission and will be an agenda item at our meeting on April 24, 2019. These materials will be provided again along with a staff report at the April 24th meeting.

Included in the information item are the following:

- Ordinance 3061-2019
- Memorandum from the City Attorney to City Council
- State of Alaska memorandums and order provided by the City Attorney to City Council



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CITY OF KENAI

ORDINANCE NO. 3061-2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.320- DEFINITIONS, 14.20.330- STANDARD FOR COMMERCIAL MARIJUANA ESTABLISHMENTS AND 14.22.010- LAND USE TABLE, TO INCORPORATE ONSITE CONSUMPTION OF MARIJUANA AT RETAIL MARIJUANA ESTABLISHMENTS INTO THE CITY OF KENAI'S CODE OF ORDINANCES.

WHEREAS, on November 4, 2014, the Alaskan voters passed Ballot Measure 2, an Act to Tax and Regulate the Production, Sale and Use of Marijuana; and,

WHEREAS, on January 20, 2016 the City of Kenai enacted regulations governing commercial marijuana establishments in the City; and,

WHEREAS, on March 12, 2019 Lieutenant Governor Kevin Meyer signed into law new regulations from the Marijuana Control Board allowing retail marijuana stores to allow onsite consumption of marijuana under certain conditions; and,

WHEREAS, in order to enforce City regulations applicable to onsite consumption of marijuana at retail marijuana stores the City must amend its code related to commercial marijuana establishments and land use table; and,

WHEREAS, the amendments in this Ordinance will require retail marijuana store owners to obtain a conditional use permit from the City as well as obtain a state endorsement prior to allowing onsite consumption of marijuana.

Section 1. Amendment of Section 14.20.320 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.320 - Definitions, is hereby amended as follows:

14.20.320 Definitions.

(a) *General Interpretation.*

- (1) Words used in the present tense include the future tense.
- (2) The singular number includes the plural.
- (3) The word "person" includes a corporation as well as an individual.
- (4) The word "lot" includes the word "plot" or "parcel."

(5) The term “shall” is always mandatory.

(6) The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended,” “arranged” or “designed to be used or occupied.”

(b) Specific Definitions.

“Accessory Building” means a detached building or structure, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot as the main building or use, except as allowed by a conditional use permit. An accessory building shall be considered to be a part of the main building when joined to the main building by a common wall or when any accessory building and the main building are connected by a breezeway.

“Accessory Use” means a use customarily incidental and subordinate to the principal use of the land, building, or structure and located on the same lot or parcel of land.

“Administrative Official” means the person charged with the administration and enforcement of this chapter.

“Agricultural Building” means a building or structure used to shelter farm implements, hay, grain, poultry, livestock, or other farm produce, in which there is no human habitation and which is not used by the public.

“Agriculture” means the science, art, and business of cultivating soil, producing crops, and raising livestock; farming.

“Airport” means a location where aircraft such as fixed-wing aircraft, helicopters, and blimps take off and land. Aircraft may be stored or maintained at an airport. An airport consists of at least one (1) surface such as a paved or gravel runway, a helicopter touchdown and lift off (TLOF) area, helipad, or water runway for aircraft takeoffs and landings, and often includes buildings such as control towers, hangars and terminal buildings.

“Airport Compatible Uses” means uses which include, but are not limited to: Hangars, Fixed Base Operators, Aircraft Repair and Manufacturing, Aircraft Sales, and other uses approved by the Ordinance of the City of Kenai, and the Federal Aviation Administration’s regulations, and compatible with the current Airport Master Plan, the Airport Layout Plan and the Comprehensive Plan.

“Alley” means a public way designed and intended to provide only a secondary means of access to any property abutting thereon.

“Alteration” means any change, addition, or modification in construction, location, or use classification.

“Animal Boarding” means any building or structure and associated premises in which animals are fed, housed, and/or exercised for commercial gain.

“Apartment House,” see “Dwelling, multiple-family.”

“Area, Building” means the total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of steps.

“Assemblage” means a large gathering of people for an event such as a concert, fair, or circus.

“Assisted Living” means a living arrangement in which people with special needs, especially seniors with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication.

“Automobile Sales” means the use of any building or structure and associated premises for the display and sale of new or used automobiles, panel trucks or vans, trailers, or recreation vehicles and including any warranty repair work and other repair service conducted as an accessory use.

“Automobile Service Station” means the use of any building or structure and associated premises or other space used primarily for the retail sale and dispensing of motor fuels, tires, batteries, and other small accessories; the installation and servicing of such lubricants, tires, batteries, and other small accessories; and such other services which do not customarily or usually require the services of a qualified automotive mechanic.

“Automobile Wrecking” means the dismantling of used motor vehicles or trailers or the storage or sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles.

“Automotive Repair” means the use of any building or structure and associated premises on which a business, service, or industry involving the maintenance, servicing, repair, or painting of vehicles is conducted or rendered.

“Bank” means any establishment or building or structure used for a financial institution that provides financial services for its clients or members. The term “bank” includes savings and loan.

“Bed and Breakfast” means a residential, owner-occupied dwelling in which rooms are rented to paying guests on an overnight basis with no more than one (1) meal served daily.

“Boarding House” means a dwelling where the principal use is a dwelling by the owner or keeper and where the owner or keeper provides lodging for three (3) or more persons who are not members of the owner’s or keeper’s family and the lodgers pay compensation to use one (1) or more rooms. The common parts of the building or structure are maintained by the owner or keeper who may also provide lodgers with some services, such as meals, laundry, and cleaning. Boarding houses are not motels or hotels and are not open to transient guests.

“Building” means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

“Building Code” means the building code and/or other building regulations applicable in the City.

“Building, Existing” means a building erected prior to the adoption of the ordinance codified in this chapter or one for which a legal building permit has been issued.

“Building Height” means the vertical distance from the “grade,” as defined herein, to the highest point of the roof.

“Building, Principal or Main” means a building or structure in which is conducted the principal or main use on the lot which said building is situated.

“Business/Consumer Services” means the provision of services to others on a fee or contract basis, such as advertising and mailing; building maintenance; employment service; management and consulting services; protective services; equipment rental and leasing; commercial research; development and testing; photo finishing; and personal supply services.

“Cabin Rentals” means the renting out of one (1) or more individual, detached dwelling units or buildings to provide overnight sleeping accommodations for a period of less than thirty (30) consecutive days.

“Cemetery” means any property used to inter the dead in buried graves or in columbarium, stacked vaults, or similar structures.

“Centerline” means the line which is in the center of a public right-of-way.

“Church” means a building or structure in which persons regularly assemble for worship, ceremonies, rituals, and education pertaining to a particular system of beliefs. The term “church” includes a synagogue or temple.

“City” means the City of Kenai, Alaska.

“Clinic” (or outpatient clinic or ambulatory care clinic) means a health care facility that is primarily devoted to the care of outpatients. Clinics can be privately operated or publicly managed and funded, and typically cover the primary health care needs of populations in local communities, in contrast to larger hospitals which offer specialized treatments and admit inpatients for overnight stays.

“Collector Street” means a street located and designed for the primary purpose of carrying through traffic and of connecting major areas of the City. Unless otherwise designated by the Commission, collector street shall be defined on the plan for streets and community facilities in the comprehensive development plan.

“College” means an educational institution providing postsecondary (after high school) education.

“Commercial Kennel” has the same meaning given in KMC [3.05.010](#).

“Commercial Marijuana Establishment” means any Retail Marijuana Store, Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, and Marijuana Testing Facility.

“Commercial Recreation” means a recreation facility operated as a business and open to the public for a fee.

“Commission” means the Kenai Planning and Zoning Commission.

“Communication Antenna” has the same meaning given in KMC [14.20.255](#).

“Communication Tower” has the same meaning given in KMC [14.20.255](#).

“Conditional Use” means a use which is permitted under the terms of this chapter provided that under the specified procedures, the Commission finds that certain conditions, specified in this chapter are fulfilled. Conditional uses are listed in the Land Use Table.

“Condominium” means a common interest ownership dwelling in which:

- (1) Portions of the real estate are designated for separate ownership;

(2) The remainder of the real estate is designated for common ownership solely by the owners of those portions;

(3) The undivided interests in the common elements are vested in the unit owners. In the Land Use Table (KMC [14.22.010](#)), “condominiums” shall be treated as two (2) or more family dwellings. For example, a four (4) unit condominium building would be treated as a four (4) family dwelling.

“Coverage” means that percentage of the total lot area covered by the building area.

“Crematory/Funeral Home” means building or structure used for preparation of the deceased for display and/or interment and may also be used for ceremonies connected with interment. Preparation may include cremation, which is the process of reducing dead bodies to basic chemical compounds in the form of gases and bone fragments. This is accomplished through burning—high temperatures, vaporization, and oxidation.

“Day Care Center” means an establishment where child care is regularly provided for children for periods of less than twenty-four (24) hours, including the building housing the facility and adjoining areas, and where tuition, fees, or other compensation for the care of the children is charged.

“Dormitory” means a building, whether public or private, associated with a school, college or university and designed, used, and arranged for private sleeping, studying, and living accommodation for students.

“Dwelling” means a building or any portion thereof designed or used exclusively for residential occupancy including one-family, two-family and multiple-family dwellings, but not including any other building wherein human beings may be housed.

“Dwelling, One-Family” means any detached building containing only one (1) dwelling unit.

“Dwelling, Two-Family” means any building containing only two (2) dwelling units.

“Dwelling, Multiple-Family” means any building containing three (3) or more dwelling units.

“Dwelling Unit” means one (1) or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one (1) family for living or sleeping purposes.

“Elementary School” means any school usually consisting of grades pre-kindergarten through grade 6 or any combination of grades within this range.

“Essential Service” means the erection, construction, alteration, or maintenance by public utility companies or municipal departments or commissions, of underground or overhead gas, electrical, steam, or water transmission or distribution systems, collection, communication, supply, or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith. This definition shall not be interpreted to include public buildings.

“Family” means any number of individuals living together as a single housekeeping unit in a dwelling unit.

“Farming” means a tract of land cultivated for the purpose of commercial agricultural production.

“Fence, Height” means the vertical distance between the ground directly under the fence and the highest point of the fence.

“Floor Area” means the total of each floor of a building within the surrounding outer walls but excluding vent shafts and courts.

“Fraternal Organization” means a group of people formally organized for a common object, purpose, or interest (usually cultural, religious or entertainment) that conducts regular meetings and has written membership requirements.

“Frontage” means all the property fronting on one (1) side of a street between intersection streets.

“Garage, Private” means an accessory building or any portion of a main building used in connection with residential purposes for the storage of passenger motor vehicles.

“Garage, Public” means any garage other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, or equipping of automobiles or other vehicles.

“Gas Manufacturer/Storage” means the surface use of lands used in the production, the mechanical transformation, or the chemical transformation of hydrocarbon gas and includes uses for gas conditioning/compressor stations. “Storage” means surface uses necessary for storage of produced or non-native natural gas.

“Governmental Building” means a building or structure owned and operated by any department, commission, or agency of the United States or of a state or municipality and used to conduct official business of government.

“Grade (Ground Level)” means the average level of the finished ground at the center of all walls to a building. In case walls are parallel to and within five (5) feet of a public sidewalk, the ground level shall be measured at the sidewalk.

“Greenhouse” means a building or structure, usually a glassed or clear plastic enclosure, used for the cultivation and protection of plants.

“Guest Room” means any room in a hotel, dormitory, boarding, or lodging house used and maintained to provide sleeping accommodations for one (1) or more persons.

“Guide Service” means any activity on any premises used for collecting or returning persons from recreational trips when remuneration is provided for the service.

“Gunsmith” means a person who repairs, modifies, designs, or builds firearms.

“High School” means a secondary school usually consisting of grades 9 through 12 or any appropriate combination of grades within this range.

“Home Occupation” means an accessory use carried out for remuneration by a resident in the resident’s dwelling unit.

“Hospital” means an institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured.

“Hotel” means a building or group of buildings containing more than five (5) guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

“Junkyard” means any space one hundred (100) square feet or more of any lot or parcel of land used for the storage, keeping, or abandonment of junk or waste material, including scrap metals or other scrap materials, or for the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or any parts thereof.

“Library” means a collection of sources, resources, and services, and the structure in which it is housed; it is organized for use and maintained by a public body, an institution, or a private individual.

“Licensed Premises For Commercial Marijuana Establishment” means any and all designated portions of a building or structure, or rooms or enclosures in the building or structure, at the specific address for which a Commercial Marijuana Establishment license is issued, and used, controlled, or operated by the Commercial Marijuana Establishment to carry out the business for which it licensed.

“Loading Space” means an off-street space or berth on the same lot with a building or structure to be used for the temporary parking of commercial vehicles while loading or unloading merchandise or materials.

“Lodge” means a building or group of buildings containing five (5) or fewer guest rooms used for the purpose of offering public lodging on a day-to-day basis with or without meals.

“Lot” means a parcel of land occupied or to be occupied by a principal use and having frontage on a public street.

“Lot, Corner” means a lot situated at the junction of, and bordering on, two (2) intersecting streets, two (2) platted rights-of-way, two (2) government easements, or any combination thereof.

“Lot Coverage” means that portion of the lot covered by buildings or structures that require a building permit.

“Lot Depth” means the horizontal distance separating the front and rear lot lines of a lot and at right angles to its width.

“Lot Line, Front-Corner Lot” means the shortest street line of a corner lot.

“Lot Line, Front-Interior Lot” means a line separating the lot from the street.

“Lot Line, Rear” means a line that is opposite and most distant from the front lot line, and in the case of irregular, triangular, or gore shaped lot, a line not less than ten feet (10') in length, within a lot, parallel to and at the maximum distance from the front lot line.

“Lot Line, Side” means any lot boundary line not a front lot line or a rear lot line.

“Lot Width” means the mean horizontal distance separating the side lot lines of a lot and at right angles to its depth.

“Manufactured Housing” means a dwelling unit that meets Department of Housing and Urban Development Standards for manufactured housing and is wider than sixteen feet (16'), has a roof pitch of 4:12 or greater with roofing and siding common to standard residential construction and is transported to the site and placed on a permanent foundation.

“Manufacturing/Fabricating/Assembly” means the mechanical or chemical transformation of materials or substances into new products including assembling of components parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

“Marijuana” means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. The term does not include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

“Marijuana Concentrate” means resin, oil, wax, or any other substance derived from the marijuana plant by any method which isolates the Tetrahydrocannabinol (THC)-bearing resins of the plant.

“Marijuana Cultivation Facility” means any entity with a state license registered to cultivate, prepare, and package marijuana and to sell marijuana to Marijuana Retail Facilities, Marijuana Products Manufacturing Facilities, Marijuana Testing Facilities, but not to consumers.

“Marijuana Cultivation Facility, Standard” means an entity registered to cultivate in an area greater than 500 square feet under cultivation, 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 Cultivation Facility, Limited” means an entity registered to cultivate in an area of 500 square feet or less of cultivation, 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 Products” means concentrated marijuana 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 Product Manufacturing Facility” means a state licensed fully enclosed secure indoor facility 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 Testing Facility” means a state licensed commercial marijuana testing facility that is registered to analyze and certify the safety and potency of Marijuana and Marijuana Products.

“Mini-Storage Facility” means a completely enclosed structure containing three (3) or more areas or rooms available for lease or rent for the purpose of the general storage of household goods, vehicles or personal property; where the lessee of the unit is provided direct access to deposit or store items and where vehicles do not fill the majority of the allowed storage space.

“Mobile Home” means a structure, which is built on a permanent chassis in accordance with Department of Housing and Urban Development Standards and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home is subject to all regulations applying thereto, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

“Mobile Home Park” means a site with required improvements and utilities for the long-term parking of mobile homes which may include services and facilities for the residents.

“Modular Home” means a dwelling constructed in modules or sections at a place other than the building site, built to conform to Title 4 of the Kenai Municipal Code, is transported to the site and then assembled and placed on a permanent foundation.

“Motel” means a group of one (1) or more detached or semi-detached buildings containing two (2) or more individual dwelling units and/or guest rooms designed for, or used temporarily by, automobile tourists or transients, with a garage attached or parking space conveniently located to each unit, including groups designated as auto courts, motor lodges, or tourist courts.

“Museum” means a building or structure that houses and cares for a collection of artifacts and other objects of scientific, artistic, or historical importance and makes them available for public viewing through exhibits that may be permanent or temporary.

“Necessary Aviation Facilities” means any air navigation facility, airport visual approach aid, airfield lighting and signage, meteorological device or any type of device approved by the Federal Aviation Administration (FAA), the location and height of which is fixed by its functional purpose.

“Nonconforming Lot” means a lot lawfully existing at the time this chapter became effective, which by reason of area or dimensions, does not meet the development requirements for the zone in which it is located.

“Nonconforming Structure” means a structure or portion thereof, lawfully existing at the time this chapter became effective, which by reason of its yards, coverage, height, or other aspects of design, does not meet the development requirements of this zone.

“Nonconforming Use” means a use of a structure of land, or of a structure and land in combination, lawfully existing at the time this chapter became effective, or established on the premises of a previous nonconforming use as specified in this chapter, which is not in conformity with the uses permitted in the zone in which it exists.

“Nursing, Convalescent or Rest Home” means a building or structure used as a residence for people who require constant nursing care and/or have significant deficiencies with activities of daily living.

“Office” means a room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

“Onsite Consumption Endorsement” means the state regulated consumption of certain marijuana products at or adjacent to a retail marijuana store by patrons of the commercial marijuana establishment.

“Park” means a tract of land, designated by a public entity for the enjoyment of the public and generally used for active and passive recreational activities.

“Parking, Public Lots” means a parking area available to the public, whether or not a fee for use is charged.

“Parking Space, Private” means any automobile parking space, excluding garages, not less than nine feet (9') wide and one hundred eighty (180) square feet in total area.

“Parking Space, Public” means an area of not less than one hundred eighty (180) square feet exclusive of drives or aisles giving access thereto in area accessible from streets and alleys for the storage of passenger motor vehicles operated by individual drivers.

“Person” means a natural person, his or her heirs, executors, administrators, or assigns, and also including firm, partnership, or corporation, or their successors and/or assigns or the agent of any of the aforesaid.

“Personal Services” mean establishments engaged in providing services involving the care of a person or his or her apparel.

“Planned Unit Residential Development” means an alternative method of development of a residential neighborhood under more flexible conditions than otherwise required in a specific zoning district.

“Principal Use” means the major or predominant use of a lot or parcel of land.

“Profession” means an occupation or calling requiring the practice of a learned art through specialized knowledge based on a degree issued by an institution of high learning, e.g., Doctor of Medicine.

“Property Owner” means the owner shown on the latest tax assessment roll.

“Public” means a place to which the public or a substantial group or persons has access and includes highway, rivers, lakes, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, hallways, lobbies and other parts of apartments houses and hotels not constituting rooms or apartments designed for actual residence.

“Recreation” means leisure activities sometimes requiring equipment and taking place at prescribed places, sites, parks, or fields. It can include active recreation, such as structured individual or team activities requiring the use of special facilities, courses, fields or equipment or passive recreation, such as activities that do not require prepared facilities such as wildlife and bird viewing, observing and photographing nature, picnicking, and walking.

“Recreational Vehicle” means a vehicular-type unit, primarily designed as temporary living quarters for recreational camping, or travel use, which either has its own motor power or is mounted on or drawn by another vehicle. Recreational vehicles include, but are not limited to, travel trailers, camping trailers, truck campers, and motor homes.

“Recreational Vehicle Park” means an area established by a conditional use permit for the parking of two (2) or more recreational vehicles on a temporary basis.

“Recreation or Youth Center” means a building, structure, athletic playing field, or playground, run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under 21 years of age.

“Restaurant” means an establishment where food and drink is prepared, served, and consumed primarily within the principal building.

“Retail Business” means establishments engaged in selling goods or merchandise to the general public for business or personal/household consumption and rendering services incidental to the sale of such goods.

“Retail Marijuana Store” means a state licensed entity registered to purchase marijuana from a marijuana cultivation facility, to purchase marijuana and marijuana products from a marijuana manufacturing facility, and sell marijuana and marijuana products to consumers.

“Secondary Use” means a use allowed on a lot or parcel of land only if there is also an allowed principal use on the property.

“Sign” means any words, letters, parts of letters, figures, numerals, phrases, sentences, emblems, devices, trade names, or trademarks by which anything is made known, such as are used to designate an individual, firm, association, corporation, profession, business, or a commodity or product, which are visible from any public street or highway and used to attract attention.

“Square Feet Under Cultivation” means an area of the licensed premises of a standard or limited cultivation facility that is used for growing marijuana, measured on the perimeter of the floor or growing space for marijuana “Square Feet Under Cultivation” does not include hallways, equipment storage areas, or other areas within the licensed premises that are not used for growing marijuana such as an office, or a processing or storage area.

“State Highway” means a right-of-way classified by the State of Alaska as a primary or secondary highway.

“Storage Yard” means a lot used primarily for the storage of operational vehicles, construction equipment, construction materials or other tangible materials and equipment.

“Street” means a public right-of-way used as a thoroughfare and which is designed and intended to provide the primary means of access to property abutting thereon.

“Structure” means that which is built or constructed, an edifice or a building of any kind, composed of parts joined together in some definite manner.

“Subsurface Extraction of Natural Resources” means removing valuable minerals or other geological materials from the earth, from an ore body, vein or (coal) seam. Materials recovered could include gas, oil, base metals, precious metals, iron, uranium, coal, diamonds, limestone, oil shale, rock salt and potash.

“Surface Extraction of Natural Resources” means removal of material, usually soil, gravel, or sand for use at another location.

“Taxidermy” means the act of mounting or reproducing dead animals, fish, and/or birds for display.

“Theater” means a building or structure, or part thereof, devoted to the indoor exhibition of motion pictures and/or of live dramatic, speaking, musical, or other presentations.

“Townhouse” means single-family dwelling units constructed in a series or group of two (2) or more units separated from an adjoining unit by an approved party wall or walls, extending from the basement of either floor to the roof along the linking lot line.

“Tree Nursery” means a place where trees/plants are propagated and grown to usable size.

“Use” means the purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied or maintained.

“Variance” means the relaxation of the development requirements of this chapter to provide relief when the literal enforcement would deprive a property owner of the reasonable use of his or her real property.

“Warehouse” means a building or structure used for the storage of goods, wares and merchandise that will be processed, sold or otherwise disposed of off the premises.

“Wholesale Business” means business conducted primarily for the purpose of selling wares or merchandise in wholesale lots to retail merchants for resale.

“Yard” means an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this chapter, on the same lot on which a building is situated.

“Yard, Front” means a yard extending across the full width of the lot between the front lot line of the lot and the nearest exterior wall of the building which is the nearest to the front lot line.

“Yard, Rear” means a yard extending across the full width of the lot between the most rear main building and the rear lot line.

“Yard, Side” means a yard on each side of a main building and extending from the front lot line to the rear lot line. The width of the required side yard shall be measured horizontally from the nearest point of a side lot line to the nearest part of the main building.

“Zoning Change” means the alteration or moving of a zone boundary; the reclassifica[-]tion of a lot, or parcel of land, from one zone to another; and the change of any of the regulations contained in this chapter.

“**Zoning Ordinance or Ordinances**” mean the zoning ordinance of the City of Kenai and Kenai Municipal Code Chapter [14](#).

Section 2. Amendment of Section 14.20.330 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.20.330 – Standards for Commercial Marijuana Establishments, is hereby amended as follows:

14.20.330 Standards for ~~[C]Commercial [M]Marijuana [E]Establishments.~~

The purpose of this section is to establish general standards for commercial marijuana establishments.

- (a) Commercial marijuana establishments and onsite consumption endorsements may be permitted or allowed with a conditional use permit under KMC [14.20.150](#), as provided in the City of Kenai’s land use table, KMC [14.22.010](#), and the provisions of this section.
- (b) Applicants applying for a conditional use permit must include an area map drawn to scale indicating all land uses on other properties within a five hundred (500) foot proximity of the lot upon which the applicant is seeking a conditional use permit. This shall be in addition to the conditional use permit submission requirements in KMC [14.20.150](#).
- (c) A public hearing shall be scheduled before the Planning and Zoning Commission to review the conditional use permit application once it has been deemed complete. The public hearing shall be scheduled in accordance with the requirements in KMC [14.20.280](#), except that notification shall be mailed to all real property owners on record on the Borough Assessor’s records within a five hundred (500) foot periphery of the parcel affected by the proposed action.
- (d) The preparation, packaging, manufacturing, processing, and storing of all marijuana, marijuana concentrate or marijuana products must be conducted within a fully enclosed, secure indoor facility. The growing and cultivating of marijuana must be conducted within a fully enclosed, secure indoor facility or greenhouse with view-obscuring rigid walls, a roof and doors, unless a non-rigid greenhouse, or other structure, is specifically approved, in which case the cultivation must be enclosed by a sight-obscuring wall or fence at least six (6) feet high.
- (e) All commercial marijuana establishments shall not emit an odor that is detectable by the public from outside the commercial marijuana establishment.
- (f) No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:

(1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and

(2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.

(g) As provided in the Land Use Table, a person or licensee may apply for a conditional use permit to allow for a marijuana cultivation facility, standard, on lots of forty thousand (40,000) square feet or greater in size, and a marijuana cultivation facility, limited, on any size lot.

(h) A marijuana cultivation facility, standard, or a marijuana cultivation facility, limited, shall only be allowed on a lot which has an existing structure consistent with a principal permitted use.

(i) A marijuana cultivation facility located in an accessory building shall be subject to the setback provisions in KMC [14.24.020](#), Development Requirements Table. A person or licensee seeking relief from the provisions in the Development Requirements Table may apply for a variance subject to the provisions of KMC [14.20.180](#).

(j) A conditional use permit for onsite consumption of marijuana and/or certain marijuana products must be obtained, in addition to a state issued endorsement license, prior to operation of any onsite consumption in the City. The conditional use permit for onsite consumption must be separate from and in addition to any conditional use permit for the operation of a retail marijuana store. An onsite consumption conditional use permit will not be issued until a condition use permit for a retail marijuana store has been issued for the same location.

Section 3. Amendment of Section 14.22.010 of the Kenai Municipal Code: That Kenai Municipal Code, Section 14.22.010 – Land Use Table, is hereby amended as follows:

14.22.010 Land [U]Use [T]Table.

LAND USE TABLE

KEY: P = Principal Permitted Use
C = Conditional Use
S = Secondary Use
N = Not Permitted

NOTE: Reference footnotes on following pages for additional restrictions

ZONING DISTRICTS																	
LAND USES	A LI	C	R R	R R-1	R S	R S-1	R S-2	R U	C C	C G	IL	IH	E D	R	TS H	LC	CM U
RESIDENTIAL																	
One-Family Dwelling	N	C ¹ ₈	P	P	P	P	P	P	P ² ₁	S ¹	S ²	S ²	C ² ₂	P	P	P	S ¹ /C ₂₁
Two-, Three-Family Dwelling	N	C ¹ ₈	P	P	P	P	P	P	P ² ₁	S ¹	C	C	C ² ₂	P	P	P	S ¹ /C ₂₁
Four-Family Dwelling	N	C ¹ ₈	P	C ³ _{, 29}	P	N	N	P	P ² ₁	S ¹	C	C	C ² ₂	N	P	C	S ¹ /C ₂₁
Five-, Six-Family Dwelling	N	C ¹ ₈	C ³	N	P	N	N	P	P ² ₁	S ¹	C	C	N	N	P	C	S ¹ /C ₂₁
Seven- or More Family Dwelling	N	C ¹ ₈	C ³	N	C ³	N	N	P	P ² ₁	S ¹	C	C	N	N	P	C	S ¹ /C ₂₁
Mobile Home Parks ⁶	N	N	C	N	C	C	C	C	C	C	C	C	N	C	N	N	C
Planned Unit Residential Development ⁷	N	C ¹ ₈	C	C ² ₉	C	C	C	C	C	C	C	C	N	C	C	C	C
Townhouses ⁴	N	C ¹ ₈	C ³	C ³ _{, 29}	C ³	C ³	C ³	C ³	C	C	C	C	C ² ₂	C	C	C	C
Accessory Building on Parcel Without Main Building or Use (See KMC 14.20.200)	N	N	C	C	C	C	C	C	N	N	N	N	N	N	C	N	N

COMMERCIAL																	
Airport Compatible Uses	P	N	N	N	N	N	N	N	C	C	C	C	N	N	N	C	C
Automotive Sales	C	N	C	N	N	N	N	C	P	P	P	P	N	N	N	N	P
Automotive Service Stations	C	N	C	N	N	N	N	C	P	P	P	P	N	C	N	N	P
Banks	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Business/Consumer Services	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Commercial Recreation	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Guide Service	C	N	C	N	C	N	N	C	P	P	P	P	N	P	P	C	P
Hotels/Motels	C	N	C	N	C	N	N	C	P	P	P	C	N	C	P	C	P
Lodge	C	N	C	N	C	N	N	C	P	P	P	C	N	P	P	C	P
Marijuana Cultivation Facility, Limited ³⁰	N	N	C	C	C	C	C	C	N	C	C	C	N	N	N	C	N
Marijuana Cultivation Facility, Standard ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	N
Marijuana Product Manufacturing Facility ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	N	N
Marijuana Testing Facility ³⁰	N	N	N	N	N	N	N	N	C	C	P	P	N	N	N	C	C
Professional Offices	C	N	C	C ² ₉	C	N	N	P	P	P	P	P	N	C	P	P	P
Restaurants	C	N	C	N	C	N	N	C	P	P	P	C	N	C	C	C	P
Retail Business	C	N ² ₆	C	N	C	N	N	C	P	P	P	P	S ² ₄	S ² ₄	C	C	P
Retail Marijuana Store ³⁰	N	N	N	N	N	N	N	N	N	C	C	C	N	N	N	C	C
<u>Onsite Consumption Endorsment</u> ³¹	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>
Theaters	N	N	C	N	C	N	N	C	P	P	C	C	N	P	C	C	P
Wholesale Business	C	N	C	N	C	N	N	C	C	P	P	P	N	S ² ₄	C	C	N

INDUSTRIAL																	
Airports	C	P ² ₀	C	N	C	N	N	C	C	C	C	C	N	C	N	N	C
Necessary Aviation Facilities	P	P	C	C	C	C	C	C	P	P	P	P	C	P	C	P	P
Automotive Repair	P	N	C	N	C	N	N	C	P	P	P	P	N	N	N	N	P
Gas Manufacturer/Storage	C ⁹	N	N	N	C	N	N	N	N	N	C ⁹	C ⁹	N	N	N	N	N
Manufacturing/Fabricating/Assembly	P	N	C	N	C	N	N	C	C	P	P	P	N	C	C	N	C
Mini-Storage Facility	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	C	C
Storage Yard	C	N	C	N	C	N	N	C	C	P	P	P	N	N	N	N	C
Warehouses	C	N	C	N	C	N	N	C	N	P	P	P	N	C	N	N	N
PUBLIC/INSTITUTIONAL																	
Assisted Living	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Churches*	N	C	P ¹ ₀	P ¹⁰	P ¹ ₀	P ¹ ₀	P ¹ ₀	P ¹ ₀	P ¹ ₀	P ¹ ₀	C	C	P	P ¹ ₀	P	P	P
Clinics	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	P	P
Colleges*	N	C	C	C ² ₉	C	C	C	C	P	P	C	C	P	C	C	C	P
Elementary Schools*	N	C	C	C ² ₉	C	C	C	C	P	P	C	C	P	C	C	C	P
Governmental Buildings	P	C	C	C ² ₉	C	C	C	C	P	P	P	C	P	C	C	P	P
High Schools*	N	C	C	C ² ₉	C	C	C	C	P	P	C	C	P	C	C	C	P
Hospitals*	N	C	C	N	C	C	C	C	P	P	P	C	C	C	C	C	P
Libraries*	N	C	C	C ² ₉	C	C	C	C ¹ ₂	P	P	P	C	P	C	P	C	P
Museums	C	C	C	C ² ₉	C	C	C	C	P	P	P	C	P	C	P	C	P

Parks and Recreation	N	P	C	C ² ₉	C	C	C	C	P	P	P	P	P	P	P	C	P
MISCELLANEOUS																	
Animal Boarding/Commercial Kennel ¹³	C	C	C	N	C	C	N	N	C	C	C	C	N	C	N	C	C
Assemblies ¹⁵ (Large: Circuses, Fairs, etc.)	P	C	C	N	C	C	C	C	P ¹ ₅	P ¹ ₅	P ¹ ₅	P ¹ ₅	P ¹ ₅	C	P	N	P ¹⁵
Bed and Breakfasts	N	C	C	C	C	C	C	C	C	C	C	C	N	P	C	C	P
Cabin Rentals	N	C	C	N	C	N	N	N	P	P	P	C	N	P	P	C	P
Cemeteries	P	C	C	N	C	N	N	N	N	C	C	C	N	C	C	N	N
Communications Towers and Antenna(s), Radio/TV Transmitters/Cell Sites** 28	C	P	C	N	C	C	C	C	P	P	P	P	P	C	C	C	C
Crematories/Funeral Homes	N	N	C	N	C	N	N	C	C	C	C	C	N	C	C	C	C
Day Care Centers ¹²	N	C	C	C ² ₉	C	C	C	C	P	P	P	C	C	C	C	P	P
Dormitories/Boarding Houses	N	C	C	N	C	C	C	P	P ² ₁	S	C	P	P ² ₃	C	C	C	P
Essential Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Farming/General Agriculture***	N	P	P	N	N	N	N	N	N	N	N	P	N	P	N	N	N
Fraternal Organizations/ Private Clubs/Social Halls and Union Halls	N	N	C	N	C	C	C	C	P	P	P	C	N	C	P	C	P
Greenhouses/Tree Nurseries ¹³	N	C	C	N	C	C	C	C	P	P	P	C	N	C	C	C	P
Gunsmithing, Taxidermy	N	N	C	N	C	C	C	C	P	P	P	P	N	C	P	P	P
Nursing, Convalescent or Rest Homes	N	N	C	N	C	C	C	C	P	P	C	C	C	C	C	C	P
Parking, Public Lots ¹²	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C

Personal Services ²⁵	N	C	C	N	C	C	C	C	P	P	P	P	C	C	P	P/C 27	P
Recreational Vehicle Parks	N	C	C	N	C	N	N	C	C	C	C	C	N	C	C	N	C
Subsurface Extraction of Natural Resources ¹⁶	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N	N	N
Surface Extraction of Natural Resources ¹⁷	C	C	C	N	C	N	N	C	N	C	C	C	N	C	N	N	N

* See 42 USCA Sec. 2000cc (Religious Land Use and Institutionalized Persons Act of 2000)

** See 42 Telecommunications Act of 1996, Sec. 704(a)

*** See, however, the limitations imposed under KMC [3.10.070](#)

Footnotes:

1 Allowed as a secondary use except on the ground floor of the part of the building fronting on collector streets and major highways. Commercial or industrial which falls under the landscaping/site plans requirements of KMC Chapter [14.25](#) shall include any secondary uses in the landscaping and site plans.

2 One (1) single-family residence per parcel, which is part of the main building.

3 Allowed as a conditional use, subject to satisfying the following conditions:

a The usable area per dwelling unit shall be the same as that required for dwelling units in the RS Zone;

b The site square footage in area must be approved by the Commission;

c Yards around the site, off-street parking, and other development requirements shall be the same as for principal uses in the RR Zone;

d Water and sewer facilities shall meet the requirements of all applicable health regulations;

e The proposed dwelling group will constitute a residential area of sustained desirability and stability, will be in harmony with the character of the surrounding neighborhood, and will not adversely affect surrounding property values;

f The buildings shall be used only for residential purposes and customary accessory uses, such as garages, storage spaces, and recreational and community activities;

g There shall be provided, as part of the proposed development, adequate recreation areas to serve the needs of the anticipated population;

h The development shall not produce a volume of traffic in excess of the capacity for which the access streets are designed;

i The property adjacent to the proposed dwelling group will not be adversely affected.

4 See "Townhouses" section.

5 See "Mobile Homes" section.

6 Allowed as a conditional use, subject to "Mobile Homes" section; and provided, that any mobile home park meets the minimum Federal Housing Authority requirements.

7 See "Planned Unit Residential Development" section.

8 Allowed as a conditional use; provided, that the proposed location and the characteristics of the site will not destroy the residential character of the neighborhood.

9 Allowed as a conditional use; provided, that all applicable safety and fire regulations are met.

10 Provided that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line.

11 Allowed as a conditional use; provided, that no part of any building is located nearer than thirty (30) feet to any adjoining street or property line; and provided further, that the proposed location and characteristics of the use will not adversely affect the commercial development of the zone.

12 Allowed as a conditional use; provided, that the following conditions are met:

a The proposed location of the use and the size and characteristics of the site will maximize its benefit to the public;

b Exits and entrances and off-street parking for the use are located to prevent traffic hazards on public streets.

13 Allowed as a conditional use; provided, that setbacks, buffer strips, and other provisions are adequate to assure that the use will not be a nuisance to surrounding properties. The Commission shall specify the conditions necessary to fulfill this requirement. Animal boarding and commercial kennels require a kennel license (see KMC Chapter [3.15](#)).

14 Allowed as a conditional use; provided, that no indication of said use is evident from the exterior of the mortuary.

15 Allowed; provided, that the following conditions are met:

a An uncleared buffer strip of at least thirty (30) feet shall be provided between said use and any adjoining property in a residential zone.

b Exits and entrances and off-street parking for the use shall be located to prevent traffic hazards on the public streets.

16 See “Conditional Uses” section.

17 See “Conditional Use Permit for Surface Extraction of Natural Resources” section.

18 **Conditional use allowed only on privately held property.** Not allowed on government lands.

19 Reserved.

20 The airport related uses allowed under this entry are aircraft approach and departure zones pursuant to KMC [14.20.070\(a\)](#), except that for properties contained inside the airport perimeter fence or having access to aircraft movement areas, taxiways or parking aprons, FAA authorized uses are allowed.

21 Developments for use shall be the same as those listed in the Development Requirements Table for the RU/TSH Zones.

22 **Allowed as a conditional use in conjunction with a permitted use in the ED Zone.** For example, housing for teachers or students for a school in the zone.

23 **Allowed as an accessory use in conjunction with a permitted use in the ED Zone.** For example, a dormitory used to house students for a school or educational facility.

24 Retail businesses allowed as a secondary use in conjunction with the primary use (e.g., a gift shop or coffee shop within another business).

25 Art studios, barbers, beauticians, tattoo parlors, dressmakers, dry cleaners and self-service laundries, fitness centers, photographic studios, tailors, tanning salons and massage therapists.

26 Food services are allowed on a temporary or seasonal basis of not more than four (4) months per year.

27 Personal services not set forth in the below matrix are conditional uses.

Limited Commercial Zone		
Personal Services	Permitted (P)	Conditional Use (C)
Art Studios	X	

Limited Commercial Zone		
Personal Services	Permitted (P)	Conditional Use (C)
Barbers	X	
Beauticians	X	
Dressmakers	X	
Dry Cleaners		X
Fitness Centers	X	
Massage Therapist		X
Photographic Studios	X	
Self-Service Laundries		X
Tailors	X	
Tanning Salons	X	
Tattoo Parlors		X

28 Communications tower/antenna(s) allowed as a principal permitted (P) use if the applicable conditions set forth in KMC [14.20.255](#) are met or a conditional use (C) if the applicable conditions set forth in KMC [14.20.150](#) and [14.20.255](#) are met.

29 Use allowed only for those parcels that abut the Kenai Spur Highway. The access to any such parcel must be either from: (a) driveway access on the Kenai Spur Highway; or (b) driveway access from a dedicated right-of-way and that driveway access is not more than two hundred seventy-five (275) feet as measured from the constructed centerline of the Kenai Spur Highway to the center of the driveway access as shown on an as-built drawing/survey of the parcel.

30 See marijuana regulations, KMC [14.20.230](#)—Home Occupations, [14.20.320](#)—Definitions, [14.20.330](#)—Standards for Commercial Marijuana Establishments.

31 A conditional use permit for an onsite consumption endorsement can only be approved if the applicant has a current conditional use permit for a Retail Marijuana Store.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

Section 4. Severability: That if any part or provision of this ordinance or application thereof to

any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

Section 5. Effective Date: That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 17th day of April, 2019.

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Introduced: April 3, 2019
Enacted: April 17, 2019
Effective: May 17, 2019



"Village with a Past, City with a Future"

210 Fidalgo Ave, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 | Fax: (907) 283-3014
www.kenai.city

MEMORANDUM

TO: Mayor Brian Gabriel and Kenai City Council

FROM: Scott Bloom, City Attorney

DATE: March 27, 2019

SUBJECT: **Ordinance No. 3061-2019 An Ordinance to Incorporate Onsite Consumption of Marijuana at Retail Marijuana Establishments into the City Of Kenai's Code of Ordinances**

Lieutenant Governor Kevin Myer recently signed into law State regulations allowing for onsite consumption of marijuana at retail marijuana stores. A separate endorsement license for this activity is required from the State. While there is an opportunity for the City to prohibit onsite consumption, this Ordinance permits the activity through a conditional use permit process. In order to accomplish this, the City's zoning code and land use table are proposed to be amended to include a definition of an onsite consumption endorsement, clarify that a conditional use permit separate from a conditional use permit for the retail facility is required, and provide where the business activity is allowed in the City. These changes can be found on pages 12, 16, 17 and 19.

The State regulations require an applicant to apply with the Marijuana Control Board for an onsite endorsement, with new application fees of \$1000, renewal fees of \$600, and license fees of \$2000. Once an endorsement is obtained (and a conditional use permit in Kenai), a retail marijuana store can sell marijuana and marijuana products, excluding concentrates, to customers in a consumption area separated from the rest of the store. For consumption, only one gram may be sold to a person per day, or edible products containing 10 mg or less of THC. Food and beverages **not** containing alcohol or marijuana may also be sold at the location. Tobacco cannot be consumed in consumption areas, and only product purchased at the location can be consumed. Drunk and intoxicated people are prohibited from entering or remaining onsite. "Intoxicated" is defined as "intoxicated from the use of a drug or alcohol." (I recognize this is not a very informative definition) Consumption areas are required to have smoke free areas for employees to monitor the consumption area, a ventilation system that eliminates odor, security measures and procedures for handling unconsumed product. Outdoor consumption areas are contemplated in the regulations with additional requirements that the activity must be compatible with surrounding uses, there must be sight obscuring borders, and there is allowance for objection by property owners within 250 feet and local government objection.

Your consideration is appreciated.



Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Debbie Morgan
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor *AS*
465.4081

DATE: March 12, 2019

RE: Filed Permanent Regulations: Marijuana Control Board
Marijuana Control Board: Marijuana Onsite Consumption (3 AAC 306.370)

Attorney General File: JU2017200548
Regulation Filed: 3/12/2019
Effective Date: 4/11/2019
Print: 230, July 2019

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF MARIJUANA CONTROL BOARD

The attached 17 pages of regulations, dealing with onsite consumption endorsements for marijuana licenses, are certified to be a correct copy of the regulation changes that the Marijuana Control Board adopted at its December 20, 2018 meeting, under the authority of AS 17.38.121 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Marijuana Control Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 1/8/19



Erika McConnell, Director
Alcohol and Marijuana Control Office

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

MARCH 12, 20 19 at 12:33 PM., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: April 11, 2019.

Register: 230, July 2019.

3 AAC 306.015(d) is amended to read:

(d) The board will impose other conditions or restrictions on a license or endorsement issued under this chapter when it finds that it is in the interests of the public to do so.

(Eff. 2/21/2016, Register 217; add'l am 2/21/2016, Register 217; am 2/21/2019,

Register 229) am 4/11/2019, Register 230

- Authority:** AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.025 is amended to read:

3 AAC 306.025. Application procedure. (a) An applicant must initiate a new marijuana establishment license or endorsement application on a form the board prescribes, using the board's electronic system.

(b) After initiating a new marijuana license or endorsement application, the applicant must give notice of the application to the public by

(1) posting a copy of the application, on the form the board prescribes, for 10 days at

(A) the location of the proposed licensed premises; and

(B) one other conspicuous location in the area of the proposed premises;

(2) publishing an announcement once a week for three consecutive weeks in a newspaper of general circulation in the area; in an area where no newspaper circulates, the applicant must arrange for broadcast announcements on a radio station serving the local area

where the proposed licensee seeks to operate twice a week for three successive weeks during triple A advertising time; the newspaper or radio notice must state

(A) the name of the applicant;

(B) the name and location of the proposed premises;

(C) the type of license **or endorsement** applied for along with a citation to a provision of this chapter authorizing that type of license **or endorsement**; and

(D) a statement that any comment or objection may be submitted to the board; and

(3) submitting a copy of the application on the form the board prescribes to

(A) the local government; and

(B) any community council in the area of the proposed licensed premises.

(c) After the applicant completes the notice requirements in (b) of this section and submits each remaining application requirement listed in 3 AAC 306.020, the applicant must pay the application and license fees set out in 3 AAC 306.100. The notice requirements in (b) of this section must be given within the 90 days preceding the submittal of all application requirements listed in 3 AAC 306.020 and the application and license fee.

(d) When the director receives an application for a marijuana establishment license **or endorsement**, the director shall determine if the application is complete. Any application for a marijuana establishment license **or endorsement** that the director receives without the application and license fee is incomplete. If the director determines the application is complete, the director shall immediately give written notice to;

(1) the applicant;

(2) the local government with jurisdiction over the applicant's proposed licensed premises;

(3) the community council if the proposed licensed premises are located within the boundary of a community council established by municipal charter or ordinance; and

(4) any nonprofit community organization that has requested notification in writing.

(e) If an application for a marijuana establishment license **or endorsement** is incomplete, the director shall notify the applicant by electronic mail at the address provided by the applicant and shall either

(1) return an incomplete application in its entirety; or

(2) request the applicant to provide additional identified items needed to complete the application.

(f) When the director informs an applicant that its application is incomplete as provided in (e) of this section, the applicant must complete the application not later than 90 days after the date of the director's notice. If an applicant fails to complete its application during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana establishment license **or endorsement**.

(g) The director may, not less than 90 days after initiation of an application, inform an applicant by electronic mail at the address provided by the applicant that missing application requirements listed in 3 AAC 306.020 must be submitted within 90 days. If an applicant fails to submit all missing application requirements during the 90-day period after the director's notice, the applicant must file a new application and pay a new application fee to obtain a marijuana

establishment license. (Eff. 2/21/2016, Register 217; am 12/28/2017, Register 224;

am 2 / 21 / 2019 , Register 229 ; am 4 / 11 / 2019 , Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.060 is amended to read:

3 AAC 306.060. Protest by local government. (a) Not later than 60 days after the director sends notice of an application for a new marijuana establishment license, a new onsite consumption endorsement, renewal of a marijuana establishment license, renewal of an onsite consumption endorsement, license conversion, or transfer of a marijuana establishment license to another person, a local government may protest the application by sending the director and the applicant a written protest and the reasons for the protest. The director may not accept a protest received after the 60-day period. If a local government protests an application for a new or renewal license, a new or renewal onsite consumption endorsement, for a license conversion, or for a transfer of a license to another person, the board will deny the application unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(b) A local government may recommend that the board approve an application for a new license, a new onsite consumption endorsement, renewal of a license, renewal of an onsite consumption endorsement, license conversion, or transfer of a license to another person subject to a condition. The board will impose a condition a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable. If the board imposes a condition a local government recommends, the local government shall

assume responsibility for monitoring compliance with the condition unless the board provides otherwise.

(c) If a local government determines that a marijuana establishment has violated a provision of AS 17.38, this chapter, or a condition the board has imposed on the licensee, the local government may notify the board. Unless the director finds that the local government's notice is arbitrary, capricious, and unreasonable, the director shall prepare the determination as an accusation against the licensee under AS 44.62.360 and conduct proceedings to resolve the matter as provided under 3 AAC 306.820. (Eff. 2/21/2016, Register 217; am 2/21/2019, Register 229 ; am 4/11/2019, Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.100 is amended to read:

3 AAC 306.100. Fees; refund. (a) The non-refundable application fee for a new marijuana establishment license, an application for license conversion, or an application to transfer a license to another person is \$1,000. **The non-refundable application fee for a new onsite consumption endorsement is \$1,000.**

(b) The non-refundable application fee for a license renewal application is \$600. If a renewal application is late as provided under 3 AAC 306.035(e), an additional non-refundable late renewal application fee is \$1,000. **The non-refundable application fee for renewal of an onsite consumption endorsement is \$600.**

(c) The non-refundable fee to request board approval of a change in a licensed marijuana establishment's business name, ownership, licensed premises diagram, operating plan, or proposed new marijuana product is \$250. A change fee does not apply to an application for transfer of a license or a transfer of controlling interest to another person.

(d) The annual license **or endorsement** fee, to be paid with each application for a new marijuana establishment facility license **or endorsement** and each license **or endorsement** renewal application is

- (1) for a retail marijuana store license, \$5,000;
- (2) for a limited marijuana cultivation facility license, \$1,000;
- (3) for a marijuana cultivation facility license, \$5,000;
- (4) for a marijuana concentrate manufacturing facility license, \$1,000;
- (5) for a marijuana product manufacturing facility license, \$5,000;
- (6) for a marijuana testing facility license, \$1,000;

(7) for an onsite consumption endorsement to a retail marijuana store license, \$2,000.

(e) The fee for a marijuana handler permit card is \$50.

(f) If the board denies an application for a license **or endorsement**, or for renewal of a license **or endorsement**, the board will refund the annual license **or endorsement** fee. The board will not refund a license **or endorsement** fee after the license **or endorsement** has been issued.

(g) Processing fees for late renewal after failure to pay taxes are as follows:

(1) if a licensee pays its delinquent tax after a local government protests renewal of the license, but before the board denies license renewal, \$200;

(2) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before a hearing officer is appointed to hear the applicant's appeal, \$500;

(3) if a licensee pays its delinquent tax after appealing the board's denial of a license renewal, but before the administrative hearing begins, \$5,000;

(4) if a licensee pays its delinquent tax after an administrative hearing that results in a hearing officer recommendation to deny the license renewal, \$10,000.

(h) The fee for a second or subsequent inspection for a new marijuana establishment is \$500. The fee applies to an inspection requested after a marijuana establishment fails a preliminary inspection, and is not issued a license. The director may waive the fee upon submission of a written request. (Eff. 2/21/2016, Register 217; am 7/19/2017, Register 223; am 8/11/2018, Register 227; am 2 / 21 / 2019 , Register 229 ; am 4 / 11 / 2019 ,

Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.110. Endorsements generally. (a) An endorsement expands the boundaries of a licensed premises or the authorized activities of the licensed business.

(b) Only the board may issue an endorsement.

(c) An endorsement is valid only in conjunction with a license. An endorsement may only be transferred to another person if the license for which the endorsement was issued is also transferred to that person. An endorsement expires if the license expires or the license is

revoked. An endorsement is suspended if the license is suspended. (Eff. 4 / 11 / 2019,

Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.200 is amended to read:

3 AAC 306.200. Local options. (a) If a majority of the persons voting on the question vote to approve the option, or if a local government's assembly or city council passes an ordinance to the same effect, the local government shall adopt a local option to prohibit

- (1) the sale or importation for sale of marijuana and any marijuana product;
- (2) the operation of any marijuana establishment, including one or more of the

following license or endorsement types:

- (A) a retail marijuana store;
- (B) a marijuana cultivation facility;
- (C) a marijuana product manufacturing facility;
- (D) a marijuana testing facility;[.]

(E) an onsite consumption endorsement to a marijuana retail store license;

(3) specific operational characteristics of an onsite consumption endorsement to a marijuana retail store license, including consumption by smoking or vaping, or outdoor consumption.

(b) A ballot question to adopt a local option under this section must at least contain language substantially similar to: "Shall (name of local government) adopt a local option to prohibit (local option under (a) of this section)? (yes or no)."

(c) The ballot for an election on the options set out in (a)(2) of this section must include a brief explanation of the activity that each license or endorsement type on the ballot may carry out.

(d) If a local government dissolves under AS 29.06.450, any marijuana establishment license issued to that local government expires when the local government dissolves.

(e) A local government may not prohibit the personal use and possession of marijuana and marijuana products as authorized under AS 17.38.020.

(f) Nothing in 3 AAC 306.200 - 3 AAC 306.260 precludes a local government from applying for a marijuana establishment license or endorsement under other provisions of this chapter. (Eff. 2/21/2016, Register 217; am 4 / 11 / 2019 , Register 230)

Authority:	AS 17.38.020	AS 17.38.200	AS 17.38.900
	AS 17.38.190	AS 17.38.210	

3 AAC 306.250 is amended to read:

3 AAC 306.250. Effect on licenses of restriction on sale. If a majority of the voters vote under 3 AAC 306.200(a) to prohibit sale of marijuana and marijuana products or the operation of marijuana establishments, or if the assembly or city council passes an ordinance to the same effect, the board will not issue, renew, or transfer to another person a license for a marijuana establishment, or issue or renew an endorsement, with premises located within the boundary of the local government. A license for a marijuana establishment or endorsement

within the boundary of the local government is void 90 days after the results of the election are certified, or after the effective date of an ordinance to the same effect if the local government opted out by ordinance. A license or endorsement that expires during the 90 days after the certification of a local option election, or during the period of time between passage of an ordinance to the same effect and the effective date of that ordinance, may be extended until it is void under this section, by payment of a prorated portion of the annual license or endorsement fee. (Eff. 2/21/2016, Register 217, am 7/27/2017, Register 223; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.020 AS 17.38.200 AS 17.38.900
AS 17.38.190 AS 17.38.210

3 AAC 306.310(b) is amended to read:

(b) A licensed retail marijuana store may not

(1) conduct business on or allow a consumer to access the retail marijuana store's licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day;

(2) allow a person to consume marijuana or a marijuana product on the retail marijuana store's licensed premises, except as provided in 3 AAC 306.305(a)(4);

(3) offer or deliver to a consumer, as a marketing promotion or for any other reason,

(A) free marijuana or marijuana product, including a sample; or

(B) alcoholic beverages, free or for compensation; or[.]

(4) allow intoxicated or drunken persons to enter or to remain on the licensed premises.

(Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.355 is amended to read:

3 AAC 306.355. Limit on quantity sold. (a) A retail marijuana store may not sell to any one person per day[IN A SINGLE TRANSACTION]

- (1) more than one ounce of usable marijuana;
- (2) more than seven grams of marijuana concentrate for inhalation, or
- (3) marijuana or marijuana products if the total amount of marijuana, marijuana

products, or both marijuana and marijuana products sold contains more than 5,600 milligrams of THC.

(b) These limits include marijuana or marijuana product sold for onsite consumption under 3 AAC 306.370(a)(2). (Eff. 2/21/2016, Register 217; am 4 / 11 / 2019, Register 230)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306 is amended by adding a new section to read:

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores. (a)

Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved onsite consumption endorsement is authorized to

(1) sell marijuana and marijuana products, excluding marijuana concentrates, to patrons for consumption on the licensed premises at the time of purchase only in an area designated as the marijuana consumption area and separated from the remainder of the premises, either by a secure door and having a separate ventilation system, or by being outdoors in compliance with (c)(4) below;

(2) sell for consumption on the premises

(A) marijuana bud or flower in quantities not to exceed one gram to any one person per day;

(B) edible marijuana products in quantities not to exceed 10 mg of THC to any one person per day; and

(C) food or beverages not containing marijuana or alcohol; and

(3) allow a person to remove from the licensed premises marijuana or marijuana product that has been purchased on the licensed premises for consumption under this section, provided it is packaged in accordance with 3 AAC 306.345.

(b) A licensed retail marijuana store with an approved onsite consumption endorsement may not

(1) sell marijuana concentrate for consumption in the marijuana consumption area or allow marijuana concentrate to be consumed in the marijuana consumption area;

(2) allow any licensee, employee, or agent of a licensee to consume marijuana or marijuana product, including marijuana concentrate, during the course of a work shift;

(3) allow a person to consume tobacco or tobacco products in the marijuana consumption area;

(4) allow a person to bring into or consume in the marijuana consumption area any marijuana or marijuana product that was not purchased at the licensed retail marijuana store;

(5) sell, offer to sell, or deliver marijuana or marijuana product at a price less than the price regularly charged for the marijuana or marijuana product during the same calendar week;

(6) sell, offer to sell, or deliver an unlimited amount of marijuana or marijuana product during a set period of time for a fixed price;

(7) sell, offer to sell, or deliver marijuana or marijuana product on any one day at prices less than those charged the general public on that day;

(8) encourage or permit an organized game or contest on the licensed premises that involves consuming marijuana or marijuana product or the awarding of marijuana or marijuana product as prizes; or

(9) advertise or promote in any way, either on or off the premises, a practice prohibited under this section.

(c) A marijuana consumption area shall have the following characteristics:

(1) the consumption area shall be isolated from the other areas of the retail marijuana store, separated by walls and a secure door, and shall have access only from the retail marijuana store;

(2) a smoke-free area for employees to monitor the marijuana consumption area;

(3) a ventilation system that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line;

(4) if outdoors, be found by the board to be compatible with uses in the surrounding area through evaluation of

(A) neighboring uses;

(B) the location of air intake vents on neighboring buildings;

(C) a sight-obscuring wall or fence around the outdoor marijuana consumption area;

(D) objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater; and

(E) any other information the board finds relevant.

(d) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the documents and endorsement fee set out in this section, which must include

(1) the applicant's operating plan, in a format the board prescribes, describing the retail marijuana store's plan for

(A) security, in addition to what is required for a retail marijuana store, including:

(i) doors and locks;

(ii) windows;

(iii) measures to prevent diversion; and

(iv) measures to prohibit access to persons under the age of 21;

(B) ventilation. If consumption by inhalation is to be permitted, ventilation plans must be

(i) signed and approved by a licensed mechanical engineer;

(ii) sufficient to remove visible smoke; and

(iii) consistent with all applicable building codes and ordinances;

(C) monitoring overconsumption;

(D) unconsumed marijuana, by disposal or by packaging in accordance with 3 AAC 306.345; and

(E) preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for onsite consumption;

(2) the applicant's detailed diagram of the marijuana consumption area which must show the location of

(A) the licensed premises of the retail marijuana store;

(B) serving area or areas;

(C) ventilation exhaust points, if applicable;

(D) the employee monitoring area;

(E) doors, windows, or other exits; and

(F) access control points;

(3) the title, lease, or other documentation showing the applicant's sole right of possession of the proposed marijuana consumption area, if the area is not already part of the approved licensed premises for the retail marijuana store;

(4) an affidavit that notice of an outdoor marijuana consumption area has been mailed to property owners, residents, and occupants of properties within 250 linear feet of the boundaries of the property on which the onsite consumption endorsement is proposed, or the notification distance required by the local government, whichever is greater.

(e) The retail marijuana store holding an onsite consumption endorsement under this chapter shall

(1) destroy all unconsumed marijuana left abandoned or unclaimed in the marijuana consumption area in accordance with the operating plan and 3 AAC 306.740;

(2) monitor patrons in the marijuana consumption area at all times, specifically for overconsumption;

(3) display all warning signs required under 3 AAC 306.360 and 3 AAC 306.365 within the marijuana consumption area, visible to all consumers;

(4) provide written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in the marijuana consumption area at no cost to patrons;

(5) package and label all marijuana or marijuana product sold for consumption on the premises as required in 3 AAC 306.345; and

(6) comply with any conditions set by the local government or placed on the endorsement by the board.

(f) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license. (Eff. 4 / 11 / 2019 , Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

3 AAC 306.990(b) is amended to add the following subsections:

(41) “drunken person” has the meaning given in AS 04.21.080(b)(9);

(42) “freestanding” has the meaning given in AS 18.35.301(i)(1);

(43) “intoxicated” has the meaning given in AS 11.81.900(b)(34);

(44) “marijuana consumption area” means a designated area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement, where marijuana and marijuana products, excluding marijuana concentrates, may be consumed.

(45) “retail marijuana store premises” means an area encompassing both the retail marijuana store and any marijuana consumption area.

(46) “sight-obscuring wall or fence” means a wall or fence, including any gates, constructed of solid material and a minimum of six feet in height. (Eff. 2/24/2015, Register 213; am 2/21/2016, Register 217; am 10/11/2017, Register 224; am 8/11/2018, Register 227; am 4 / 11 / 2019 , Register 230)

Authority:	AS 17.38.010	AS 17.38.150	AS 17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: February 28, 2019

File No.: JU2017200548

Tel. No.: 465-3600

From: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Re: Marijuana Control Board:
Marijuana Onsite Consumption
(3 AAC 306.370)

The Department of Law has reviewed the attached regulations of the Marijuana Control Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations implement standards for onsite consumption of marijuana (excluding concentrates) in a freestanding licensed retail marijuana store with an endorsement. An endorsement is not a separate license for a retail marijuana store; it is a separate authorization on top of a retail marijuana store license.

The subject of these regulations was considered by the board for approximately two years (and 11 public meetings). Our review addresses whether the procedural steps were followed and whether the regulations are consistent with the authorizing statute and reasonably necessary to carry out its purpose. AS 44.62.030 and 44.62.060 (review of regulations for legality, constitutionality, and consistency with other regulations). We also address federal law in relation to the proposed regulations. AS 44.62.020 (“To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.”) *Davis v. State*, 235 P.3d 1017, 1020 (Alaska App. 2010); *Beran v. State*, 705 P.2d 1280, 1287 (Alaska App. 1985).

Procedural steps. The proposed regulations were published on August 23, 2018; the notice stated the board was considering regulations for onsite consumption endorsements for retail marijuana establishments. The board accepted written and oral comments, with oral comments occurring at a hearing on December 19, 2018. The regulations were adopted by the Marijuana Control Board after the close of the public comment period.

The August 23, 2018 public notice gives notice that the board would consider onsite marijuana consumption endorsements for retail marijuana establishments. The board took written and oral comments. The board adopted the regulation at its December 20, 2018 meeting. Further, the public notice and the January 8, 2019 certification of adoption order states that this action is

not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Consistency with authorizing statute. The board is authorized to propose and adopt regulations. Further, while marijuana consumption “in public” is illegal (AS 17.38.040) consumption within regulated, licensed premises is anticipated; the board has statutory authority to make changes to the area of a licensed premises “necessary to ensure control over the sale and consumption of marijuana on the premises.” AS 17.38.121(c). Under current regulation, “in public” does not “include an area on the premises of a licensed retail marijuana store designated for onsite consumption.” 3 AAC 306.990(a)(5)(C). The board further provides in these regulations that marijuana consumption is limited to a “marijuana consumption area within the licensed premises of a retail marijuana store that holds a valid onsite consumption endorsement.” 3 AAC 306.990(b)(44).

Consumption of marijuana in a licensed premises excludes marijuana concentrates (3 AAC 306.990(b)(44)), but envisions that some consumption may be through smoking marijuana or a marijuana product. Accordingly, we considered AS 18.35.301, which addresses public health law by prohibiting smoking tobacco in certain places, but the statute provides an exception for smoking “in an establishment licensed under AS 17.38 that is freestanding if the smoking is in accordance with regulations adopted by the Marijuana Control Board created under AS 17.38.080.” AS 18.35.301(h)(3). “Freestanding” means a building that is not supported by another structure and does not share ventilation or internal airspace with an adjoining structure and smoke from the building cannot travel into the adjoining structure. AS 18.35.301(i)(1). The regulations proposed here adopt this definition of “freestanding” in 3 AAC 306.990(b)(42).

In short, we find that the state statutes provide the board with necessary regulatory authority, and anticipate onsite consumption of marijuana, in a freestanding building.

Reasonably necessary to carry out the statutory purpose. Here we consider if the regulation is reasonable and not arbitrary. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971). Initially we note that the board considered the issue of onsite consumption for approximately two years, including approximately 11 meetings of substantive discussion about onsite consumption. The result is a detailed regulation, 3 AAC 306.370, onsite consumption endorsement for retail marijuana stores, to set the standards for onsite consumption. We are confident the record reflects that the board engaged in reasoned decision making. *See, Alaska Fish & Wildlife Conservation Fund v. State*, 347 P.3d 97 (Alaska 2015).

Specifically, the section limits consumption endorsements to stores that are freestanding, and where not otherwise prohibited by local or state law. 3 AAC 306.370(a). A marijuana store with a consumption endorsement is authorized to sell marijuana products including limited quantities of bud or flower or products not to exceed 10 mg of THC and *not including concentrates*, for consumption in a designated area that is separated from the rest of the store by a secure door and having a separate ventilation system or that is outdoors. 3 AAC 306.370(a)(1) and (2). The store may sell food or beverages not containing marijuana or alcohol (3 AAC 306.370(a)(2)(C)) and may allow customers to take away from the premises product that they

have purchased for consumption on the premises so long as it is packaged properly. 3 AAC 306.370(a)(3). The section provides that a store with an endorsement may not:

- (1) sell concentrate for consumption in the consumption area or allow it to be consumed in the consumption area;
- (2) allow consumption by employees while on the job;
- (3) allow tobacco consumption;
- (4) allow offsite purchases to be consumed in the consumption area;
- (5) offer “happy hour” type discounts;
- (6) offer “all-you-can-eat” type deals;
- (7) offer “in-house” type discounts;
- (8) offer or encourage games or contests that involve marijuana consumption or awarding of marijuana as prizes; or
- (9) advertise any prohibited practice, whether on or off the premises.

In addition, this section sets out the physical characteristics of a marijuana consumption area. 3 AAC 306.370(c). It must be accessible only from inside the store but must be isolated from the rest of the store, have a smoke-free area from which employees can monitor the consumption area, and have a ventilation system that directs air outside and removes visible smoke and odor at the property line. 3 AAC 306.370(c)(1)-(3). If the consumption area is outdoors, it must be found by the board to be compatible with uses in the surrounding area. 3 AAC 306.370(c)(4). This paragraph requires at least the consideration of a sight-obscuring wall or fence around the area and consideration of the objections of neighbors.

Obtaining an endorsement for onsite consumption requires an applicant to hold a license for a retail marijuana store. To apply for an endorsement to allow onsite consumption on the licensed premises, the applicant must show plans for security, ventilation, monitoring consumption, disposition of unconsumed marijuana, and preventing introduction of product not purchased onsite. 3 AAC 306.370(d)(1). In addition, the application must include a detailed diagram of the consumption area, ventilation exhaust points, the employee monitoring area, and access control points, as well as proof of possession of the property and proof that notice of any outdoor consumption area has been given to nearby property owners. 3 AAC 306.370(d)(2)-(4). Subsection (c) requires an endorsement holder to destroy all unconsumed product left by customers, monitor consumption, display warning signs required of stores, provide dosage and safety information for each product that is sold for consumption, ensure that all product is packaged properly, and comply with all conditions set by local government or the board. Finally, onsite endorsements must be renewed annually. 3 AAC 306.370(f).

Local governments can adopt a local option to prohibit onsite consumption endorsements, just as they can now opt out of specific license types (stores, cultivation facilities, manufacturing facilities and testing facilities) (3 AAC 306.200(a)(2)); with the proposed amendments, they could also opt to prohibit specific operational characteristics of an onsite consumption endorsement, including by smoking or vaping, or consuming outdoors. 3 AAC 306.200(a)(3); 3

AAC 306.250. Also, these proposed amendments would allow a local government to hold an endorsement if it has a retail store license. 3 AAC 306.200(f).

In our view, the regulations are reasonably necessary to assure onsite consumption is retained in the licensed premises of a freestanding building.

Federal law. Next, we address whether the regulations are problematic under federal law. Under Alaska law, some commercial marijuana activity is authorized under AS 17.38, including onsite consumption on a licensed premises; for the reasons explained above these regulations are authorized by state law. But marijuana cultivation, use, and possession remains illegal under federal law. The regulations cannot resolve this conflict. Previously, the federal government issued guidance for states with legalized marijuana suggesting that the federal government would be more inclined to leave enforcement of criminal law applicable to commercial marijuana to states where the state has a robust regulatory system.¹ Accordingly, our state's marijuana regulation has been developed with attention to former key federal guidance, including regulatory action to ensure safe and clear packaging, regulations to ensure marijuana is not accessible to persons under age, and robust vetting requirements for licensees. The current regulations appear to establish robust requirements for onsite consumption designed to ensure limited onsite use, and with restrictions (such as requirements for security) designed to ensure that marijuana consumption occurs only by those of legal age on a designated area of a licensed premise, remains on the premise, and includes only consumption of marijuana purchased at the licensed premise. Accordingly, we believe that the board has established restrictions to ensure compliance with state law.

SRP:lbp

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¹ James M. Cole, Deputy Attorney General, U.S. Dep't of Justice, *Memorandum for All United States Attorneys, Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013; later withdrawn, Memorandum from Attorney General Jefferson B. Sessions III to All U.S. Attorneys (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.