

KODIAK CITY COUNCIL

WORK SESSION AGENDA

Tuesday, May 8, 2018

Kodiak Public Library Multi-Purpose Room

7:30 p.m.

Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.

Discussion Items

- 1. Public Comments (limited to 3 minutes)
- 2. Marijuana Ordinance1
- 3. Review Draft Contracts for American President Lines
- 4. Discuss Summer Meeting Schedule
- 5. May 10, 2018, Agenda Packet Review

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BOYD, CHANDLER & FALCONER, LLP

Attorneys At Law
Suite 302
911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcfaklaw.com

MEMORANDUM

To: Kodiak City Council
From: Charles Cacciola
Date: March 29, 2018
Re: Marijuana Business Ordinance

In November 2016, the Marijuana Advisory Committee, formed by council resolution, made 14 regulatory recommendations.¹ We were asked to draft implementing ordinances.

The Kodiak Island Borough, following joint City-Borough work sessions and as the local zoning authority, amended the Borough zoning code to zone marijuana businesses. With modest exception, Borough zoning of marijuana businesses reflects the Marijuana Advisory Committee's recommendations. The proposed ordinance accompanying this memo implements the Marijuana Advisory Committee's non-zoning recommendations.

This memo provides a brief summary of the proposed ordinance followed by a section identifying how each of the Advisory Committee's recommendations are accomplished.

A. Proposed Ordinance

The proposed ordinance renumbers Chapter 7.40 to 5.24, moving ordinances regulating marijuana businesses to the Business License and Regulation title. It also prohibits commercial manufacture and sale of marijuana edibles, provides an additional setback from schools, and, most importantly, establishes a procedure for the council to review and protest marijuana establishment license applications.

¹ See City Manager Tvenge Memo to Council (October 12, 2017).
MEMO: MARIJUANA BUSINESS ORDINANCE

The proposed license application review procedure (5.24.020) has three key components. First, respective city departments review the application to determine if the proposed license adheres to legal requirements. Based on this review, the administration prepares a report and recommendation for the council’s consideration. The second component is a public hearing. The third component is council action on the application. Subsection (d) identifies bases upon which the council may decide to protest (or conditionally protest) a license. Codifying these bases is intended to provide guidance the council and applicants. But the council, acting as the local regulatory authority on marijuana, retains authority to protest on any non-arbitrary or capricious ground, including ones not identified in the subsection.

The proposed definition for “school ground” includes any public or private school. It does not include UAA or other facilities used for adult education, nor does it include licensed daycares. This definition can be narrowed or broadened to achieve the council’s goals.

B. Marijuana Advisory Committee’s Recommendations

1) *Establish a 500’ separation distance from any school property line to a public entrance of a marijuana establishment.*

Under state law, the 500’ distance from a school is measured “by the shortest pedestrian route from the public entrance of the building in which the licensed premises would be located to the outer boundaries of the school ground . . .” The Borough has a similar zoning provision (separate from borough regulation of marijuana businesses outside of cities set forth in Chap 5.02), KIBC 17.15.120.

Ms. Marlar clarified that it was the committee’s specific intent for this distance to be measured differently under city ordinance than under state law. The proposed Section 5.24.030 specifies that a marijuana business cannot be located within 500’ of school *as measured in a straight line to the school property boundary*. A marijuana license applicant would need to comply with both the state and City buffer for school grounds.

2) *Adhere to state rules and regulations regarding the 500’ pedestrian pathway separation from a marijuana establishment to jails, churches, etc.*

No action is presently needed to accomplish this goal. The City ensures that an applicant satisfies this requirement during review of the license application.

3) *Regulate retail stores within the City limits to industrial, light industrial, business, and business retail.*

The Borough zoning code reflects this recommendation.

4) *Comply with State of Alaska laws for retail stores within the City limits.*

No action is presently needed to accomplish this goal. The City ensures that an applicant satisfies these requirements during review of the license application.

5) *Adhere to State of Alaska laws for personal growing of marijuana.*

No action is presently needed to accomplish this goal. Cultivation for personal consumption in excess of the allowances set forth by state law is subject to criminal penalties and can be enforced by the Kodiak Police Department.

6) *Establish a 500' pedestrian pathway separation from a marijuana cultivation facility to jails, churches, etc.*

No action is presently needed to accomplish this goal. The City ensures that an applicant satisfies these requirements during review of the license application

7) *Regulate commercial growing within the City limits to industrial, light industrial, business, and business retail areas.*

This recommendation is substantively satisfied by Borough code. The Borough zoning code allows for cultivation by right in the light industrial, industrial, and conservation districts. Cultivation is a condition use in the retail business district and business district. Additionally, the Borough code allows limited cultivation facilities (not more than 500 square feet under cultivation) as a conditional use in the rural residential districts on lots 40,000 square feet or larger.

8) *Adopt attorney's recommended ordinance Designating City Council as the City's Local Regulatory Authority on Marijuana and incorporate a process by which the Council is aware of new licenses and has the opportunity to object.*

Ordinance No. 1365 was adopted September 28, 2017. That ordinance did not establish a procedure for reviewing and protesting license applications. The proposed ordinance contains such a procedure.

We also recommend “moving” the designation from its existing location in Title 7 (Health and Sanitation) to Title 5 (Business Licenses and Regulation). There is no substantive change, but a chapter of regulations for marijuana commerce is a better fit for Title 5.

9) *Adopt attorney's recommended ordinance Prohibiting Extraction of Tetrahydrocannabinol ("THC") or any Cannabinoid by Use of Materials or Methods Deemed Dangerous to Public Health and Safety, Unless Otherwise Permitted by Law.*

The provision is codified as KCC 8.40.010.

10) *Approve limited cultivation licenses in rural residential lots 20,000 square feet or greater with issuance of a conditional use permit and in compliance with Kodiak Island Borough zoning requirements.*

The City cannot accomplish this goal because the Borough requires that a residential lot be 40,000 square feet or greater. The City cannot be more permissive than the Borough.

11) *Approve manufacturing facilities in industry, light industry, and both business and business retail districts with a conditional use permit.*

The Borough code allows manufacturing facilities *by right* in industry, light industry, retail business, and general business.

The Committee recommended that manufacturing facilities be a conditional use in the latter two districts. Through discussion with Mr. Tvenge and Ms. Marlar, we determined that the Advisory Committee's recommendation and existing Borough zoning are not sufficiently different to justify additional City regulation, particularly where the Borough, not the City, wields zoning authority.

12) *Allow testing facilities in industrial, light industrial, business, and conservation districts.*

This recommendation is substantively satisfied by Borough code. The Borough Code allows for testing facilities by right in all of the above districts except for the conservation district.

13) *Do not assess a local marijuana entity application fee, licensing fee, and special sales tax at this time. (Regular sales tax would still apply.)*

No action necessary.

14) *Prohibit edibles within the City of Kodiak at this time and discuss again with the City Council in one year whether to permit edibles as a part of a manufacturing process.*

Section 5.24.040 prohibits the commercial manufacture and all sale of marijuana edibles. Prohibiting the creation of marijuana edibles for personal consumption is not feasible.

It is worth noting that the Borough also prohibits commercial manufacture of marijuana edible, but the Borough restriction does not apply in cities.

Please let us know if you have any further questions regarding this matter.

**CITY OF KODIAK
ORDINANCE NUMBER XXXX**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
TITLE 5 WITH THE RENUMBERING OF KCC CHAPTER 7.40 TO CHAPTER 5.24.
AND THE ADDITION OF NEW SECTIONS FOR MARIJUANA BUSINESSES**

WHEREAS, the Kodiak city council has been designated as the city’s local regulatory authority on marijuana;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: This ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

Section 2: Chapter 7.40 Marijuana Regulation, of the Kodiak City Code, is hereby renumbered to Chapter 5.24, with Section 7.40.010 renumbered to 5.24.010 accordingly.

Section 3: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.005 to read as follows:

5.24.005. Definitions.

As used in this chapter the following definitions shall apply:

“Edible marijuana product” means a marijuana product that is intended to be consumed orally, whether as food or drink.

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

“School ground” means any facility operated by a school board or private school, as defined by AS 14.45.200, to provide educational, athletic, or recreational activities for persons under 18 years of age.

Section 4: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.020 to read as follows:

5.24.020. License Application Review.

(a) Upon receipt of notice from the Alcohol and Marijuana Control Office that a new, renewal, or transfer application for a marijuana business license has been deemed complete, the clerk shall forward the application to appropriate department heads to make investigations within their respective areas of responsibility. The city manager or designee shall compile the responses, and provide the council with the administration's recommended action.

(b) For the purpose of public hearing and council action, the clerk shall place the matter of the application upon the agenda for a regular or special meeting of the council held not less than fifteen or more than 50 days from receipt of the notice from the Alcohol and Marijuana Control Office.

(c) After receiving the administration report and public comment, the council, by motion, may take one of the following actions on the matter of the license:

(1) Non-objection. Upon finding that the permit satisfies all legal requirements, the council may authorize the clerk to issue a letter of non-objection to the Marijuana Control Board.

(2) Non-objection with conditions. If any requirements or obligations are not satisfied, but could be satisfied through further action of the licensee(s), the council may authorize the clerk to issue a letter of conditional non-objection to the Marijuana Control Board for the issuance, transfer, or renewal of the license setting forth the city's conditions for non-objection.

(3) Protest. Upon determining the existence of one or more of the grounds contained in subsection (d) of this section, the council may direct the clerk to cause a protest to be filed with the Marijuana Control Board.

(d) A marijuana license may be protested for one or more of the following reasons:

(1) Failure of the applicant to secure any required city permit, or if the applicant is in violation of any applicable city permit;

(2) That the applicant has violated a provision of AS 17.38 or regulations adopted by the state, or a condition imposed by the Alcohol and Marijuana Control Office on the license, or if issuance of the license would violate a provision of state law or regulations;

(3) The marijuana business operated under the license or any other business owned in whole or in part by any person named in the application as an applicant or on the permit is, on the date the council considers the matter, delinquent in the payment of any sales tax or penalty or interest on sales tax arising out of the operation of any business within the city;

(4) There are delinquent property taxes or local improvement district assessments or penalty or interest thereon arising out of real or personal property owned in whole or in part by any person named in the application as an applicant or such property as is to be used in the conduct of business under the license;

(5) There is a delinquent charge or assessment owing to the city or borough by the licensee for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided or conducted by the city or

borough at the request of or arising out of an activity of the business conducted under the license;

(6) The business operated or to be operated under the license is violating or would violate the Kodiak City Code;

(7) The business operated under the license is, on the date the council considers the matter, in violation of a state or municipal fire, health, or safety code, or for any concern identified by the building official, or police chief or fire chief (A conviction for a violation is not a prerequisite for a protest under this section);

(8) The concentration of other marijuana business or alcohol licenses in the area;

(9) Any factor identified by state statute or regulation as appropriate grounds for a protest; or

(10) Any other factor the council determines is generally relevant or is relevant to a particular application.

Section 5: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.030 to read as follows:

5.24.030. Licensed premises not less than 500 feet from schools.

(a) Licensed premises shall not be located within 500 feet of any school ground.

(b) The distance specified in this section shall be measured by a straight line from the public entrance of the building in which the licensed premises would be located to the lot line or real property boundary for the any lot or parcel containing a school ground.

(c) This section does not prohibit the renewal of an existing marijuana establishment license or the transfer of an existing marijuana establishment license to another person if the licensed premises were in use before the school ground began use of a site within 500 feet.

Section 6: Chapter 5.24 Marijuana Regulation, of the Kodiak City Code, is hereby amended with the addition of a new Section 5.24.040 to read as follows:

5.24.040. Manufacture and Sale of Marijuana Edibles Prohibited.

Manufacture of edible marijuana products on any licensed premises and all sale of edible marijuana products is unlawful.

Section 7: This ordinance shall be effective one month after final passage and publication.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date: