

Introduced by: KIB Assembly
Drafted by: CDD Director
Introduced on: 04/06/2017
Amended on: 04/20/2017
Public Hearing Date: 04/20/2017
Adopted on: 04/20/2017

**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2017-27**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING
KODIAK ISLAND BOROUGH CODE TITLE 3 REVENUE AND FINANCE, TITLE 5 BUSINESS
LICENSES AND REGULATIONS, AND TITLE 17 ZONING TO PROVIDE FOR
REGULATIONS RELATING TO MARIJUANA BUSINESSES**

WHEREAS, the passage of Ballot Measure #2 in the 2014 State of Alaska Election has provided for the legalization of various marijuana-related activities on a specific timeline; and

WHEREAS, AS 17.38.110 provides for local government control not in conflict with state law; and

WHEREAS, the Kodiak Island Borough wishes to exercise the authority granted to it by AS 17.38.110; and

WHEREAS, the Kodiak Island Borough implemented a moratorium on the operation of commercial marijuana businesses until April 30, 2017 through Ordinance No. FY2016-17A; and

WHEREAS, the Kodiak Island Borough formed a Marijuana Task Force through the adoption of Resolution No. FY2016-31; and

WHEREAS, the Marijuana Task Force developed recommendations for regulating marijuana businesses in the Kodiak Island Borough; and

WHEREAS, in accordance with AS 29.40.020 the Planning and Zoning Commission discussed the proposed changes to Title 17 (Zoning) at work sessions, regular meetings, or special meetings on February 8, 2017, February 15, 2017, March 15, 2017, and March 22, 2017; and

WHEREAS, the Planning and Zoning Commission, following the March 22, 2017 public hearing, failed to pass a motion to transmit their recommendations for revisions to Title 17 to the Borough Assembly; and

44 **WHEREAS**, on March 23, 2017, two Planning and Zoning Commissioners filed a
45 Reconsideration Affidavit with the Community Development Department stating their intent to
46 reconsider the vote taken after the March 22, 2017 public hearing; and
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48 **WHEREAS**, the Planning and Zoning Commission, at their April 19, 2017 regular meeting,
49 voted to reconsider the vote taken after the March 22, 2017 public hearing and voted to transmit
50 their recommendations for revisions to Title 17 to the Borough Assembly; and
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52 **WHEREAS**, the Borough Assembly discussed the proposed changes at work sessions and
53 regular meetings on March 16, 2017, March 30, 2017, April 6, 2017, April 13, 2017, and April
54 20, 2017; and
55

56 **WHEREAS**, the Borough Assembly, following the public hearing at the April 20, 2017 regular
57 meeting, voted to adopted Ordinance FY2017-27.
58

59 **NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND**
60 **BOROUGH THAT:**
61

62 **Section 1:** This ordinance is of a general and permanent nature and shall become a part of the
63 Kodiak Island Borough Code of Ordinances.
64

65 **Section 2:** Titles 3, 5, and 17 of the Kodiak Island Borough Code of Ordinances are amended
66 to read as follows:
67

68 **Chapter 3.70**
69 **EXCISE TAX ON MARIJUANA**
70

71 **3.70.010 Applicability, purpose and authority.**

72 **3.70.020 Definitions.**

73 **3.70.030 Excise tax on marijuana.**

74 **3.70.040 Exemptions.**

75 **3.70.050 Tax returns.**

76 **3.70.060 Involuntary returns.**

77 **3.70.070 Amended tax returns.**

78 **3.70.080 Application of payments.**

79 **3.70.090 Prohibited acts and penalties.**

80 **3.70.100 Civil fraud.**

81 **3.70.110 Tax lien.**

82 **3.70.120 Interest on unpaid tax.**

83 **3.70.130 Taxpayer, licensee, or other person remedies.**

84 **3.70.140 Inspection and maintenance of documents and records.**

85 **3.70.150 Administrative regulations.**

86 **3.70.160 Confidentiality of records.**
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88 **3.70.010 Applicability, purpose and authority.**

89 A. Applicability. Unless provided otherwise, this chapter shall apply to the taxation of all
90 marijuana cultivated within the borough for commercial or retail sale purposes, including
91 marijuana cultivated by a standard marijuana cultivation facility and a limited marijuana
92 cultivation facility.

93
94 B. Purpose. The purpose of this section is to provide for the levy of an excise tax on
95 marijuana cultivated within the borough by any marijuana cultivation facility, and the
96 enforcement of such tax.

97
98 C. Authority. This chapter and the regulations related to marijuana establishments herein
99 are adopted pursuant to the authority granted by AS 17.38.100 and 29.35.010(6).

100
101 3.70.020 Definitions.

102 “Flower and bud” means the hairy, sticky, or crystal-covered parts of mature female
103 marijuana plants generally harvested for their high potency content.

104 “Marijuana” has the meaning given in AS 17.38.900.

105 “Marijuana cultivation facility” has the meaning given in AS 17.38.900 and includes both
106 a standard marijuana cultivation facility and a limited marijuana cultivation facility as
107 licensed under 3 AAC 306.300.

108 “Marijuana product manufacturing facility” has the meaning given in AS 17.38.900.

109 “Marijuana testing facility” has the meaning given in AS 17.38.900.

110 “Ownership change” means:

111 1. If the licensee is a partnership, including a limited partnership, any change in the
112 identity of the partners, or in the ownership percentages held by any partners;

113 2. If the licensee is a limited liability company, any change in the identity of the members,
114 or in the ownership percentage held by any member; or

115 3. If the licensee is a corporation, any sale of corporate stocks to a person not currently
116 an owner, or any change of the percentage ownership of an existing shareholder.

117 “Retail marijuana store” has the meaning given in AS 17.38.900.

118 “Transfer” means the exchange of marijuana, as defined under AS 17.38.900, with or
119 without consideration, or by barter, between marijuana establishments, or within
120 marijuana establishments possessing multiple permits, for commercial purposes.

121
122 3.70.030 Excise tax on marijuana.

123 A. The borough hereby levies an excise tax on all marijuana cultivated in any facility
124 licensed pursuant to 3 AAC 306.300, including standard marijuana cultivation facilities,
125 and limited marijuana cultivation facilities.

126
127 B. All nonexempt marijuana transferred from a marijuana cultivation facility shall be
128 taxed as follows:

129
130 1. Any part of the flower and bud, as defined in 15 AAC 61.290, will be taxed, on a
131 per-ounce basis, at a rate equal to twenty percent of any per-ounce excise tax
132 imposed by the State of Alaska on the date of transfer pursuant to AS 43.61.010,
133 or \$10.00 per ounce, whichever is greater;

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2. All remaining portions of the plant not included in subsection (B)(1)(a) of this section will be taxed, on a per-ounce basis, at a rate equal to twenty percent of any per-ounce excise tax imposed by the State of Alaska on the date of transfer pursuant to AS 43.61.010, or \$3.00 per ounce, whichever is greater.

C. A marijuana cultivation facility that is also licensed as a marijuana product manufacturing facility must pay tax on all marijuana transferred from the cultivation facility to the product manufacturing facility for the month in which the marijuana was transferred.

D. A marijuana cultivation facility that is also licensed as a retail marijuana store must pay tax on all marijuana transferred from the cultivation facility to the retail marijuana store for the month in which the marijuana was transferred.

3.70.040 Exemptions.

A. The tax imposed under this chapter does not apply to marijuana if the state of Alaska prohibits the levying of this tax under AS 17.38.

B. Transfers to a licensed marijuana testing facility are exempt from the excise tax on marijuana.

3.70.050 Tax returns.

A. On or before thirty (30) days after the end of each month, licensees shall submit to the finance director a tax return, upon forms provided by the finance director, for each license, and submit payment for the taxes due as prescribed by the finance director.

B. The return shall be signed under penalty of perjury by the licensee or agent and shall include:

1. A copy of the tax return for that month submitted by the licensee to the Alaska Department of Revenue in accordance with 15 AAC 61.010;
2. The name and address of the licensee;
3. The name and address of the person filing the return, if different from the licensee;
4. The number of the zoning compliance permit issued under KIBC 17.15.060;
5. The name under which the marijuana cultivation facility is being operated;
6. A report setting forth the total amount of marijuana transferred from the marijuana cultivation facility in ounces, with fractional ounces calculated to the third decimal place, for the preceding month;
7. The amount of tax due;
8. Such other information and supporting documentation which may be required by the finance director.

177 C. A marijuana cultivation facility licensed under this chapter shall file a tax return by
178 thirty (30) days after the end of the previous month, even if it did not cultivate or transfer
179 any marijuana in the borough during the preceding month.

180
181 D. The taxes imposed under this chapter and the return required by this section must be
182 received by the finance director or postmarked within thirty (30) days following the
183 month covered by the return.

184
185 E. A separate tax return must be filed for each location when a taxpayer is operating in
186 several locations within the borough.

187
188 3.70.060 Involuntary returns.

189 If a licensee fails to file a return as required by this chapter, or when the finance director
190 finds that a return is not supported by the records to be maintained pursuant to this
191 chapter, the finance director may prepare and file a return on behalf of the licensee.
192 Involuntary returns filed under this section may be premised upon any information that is
193 available to the finance director, including, among other things, a copy of the materials
194 the applicant submitted to the Alaska Department of Revenue in accordance with 15 AAC
195 61.010, and comparative data for similar businesses. A licensee for whom an involuntary
196 return is filed under this section shall be subject to liability for the tax stated in the
197 return, as well as subject to the penalties and interest provided for in this chapter. A
198 return prepared by the finance director is prima facie, good and sufficient for all legal
199 purposes. However, nothing prevents the licensee from presenting evidence on appeal to
200 rebut the presumed sufficiency of a return prepared by the finance director, nor does the
201 presumption of sufficiency alter the parties' respective burdens of proof once the
202 licensee has presented evidence to rebut that presumption.

203
204 3.70.070 Amended tax returns.

205 A. Any tax return filed hereunder may be amended by the licensee within one year after
206 the due date of the tax return being amended. No amendment by the licensee shall be
207 allowed after this one-year period.

208
209 B. Any tax return prepared and filed by the finance director on behalf of the licensee may
210 be amended by the licensee within one year of the date filed by the finance director. No
211 amendment by the licensee shall be allowed after this one-year period.

212
213 3.70.080 Application of payments.

214 Any payment submitted to the finance director for any taxes, penalties, interest, or cost
215 due under any provision of this chapter or any return or any finding or determination by
216 the finance director under this chapter shall be credited to the monthly tax period for
217 which it was remitted, first to the payment of costs and then to penalties, interest, and
218 taxes in that order.

219
220 3.70.090 Prohibited acts and penalties.

221 A. No person shall operate a marijuana cultivation facility within the borough without
222 complying with the provisions of this chapter.

223
224 B. A penalty of ten (10) percent of the taxes due shall be incurred automatically when a
225 person fails to pay the full amount of the tax due under this chapter within seven
226 calendar days following its due date.

227
228 1. The penalty shall be computed on the unpaid balance of the tax liability as
229 determined by the finance director.

230 2. Notice of the penalties incurred and to be incurred shall be given to the person
231 responsible for payment of the taxes or for filing the return or report when such
232 tax payment or return or report is delinquent for seven calendar days after its due
233 date.

234 3. The penalties provided for in this section shall be in addition to all other
235 penalties and interest for under this chapter.

236
237 C. If a properly filed amended return reduces the total tax liability or the tax required to
238 be paid, or the determent reduces the tax liability, the related penalty will be reduced
239 accordingly.

240
241 D. All penalties and remedies enumerated in this chapter are cumulative.

242
243 E. Unless otherwise provided in this section, any person who violates or fails to comply
244 with the provisions of this chapter shall be personally liable for all costs, interests,
245 penalties and taxes due under this chapter plus a penalty equal to twelve (12) percent of
246 the tax due. For good cause shown, the finance director may waive or reduce all or part
247 of any penalty imposed under this subsection.

248
249 3.70.100 Civil fraud.

250 A. A civil fraud penalty may be assessed against a person in addition to a penalty for
251 failure to file or failure to pay.

252
253 B. If it is determined by the finance director that a tax deficiency or part of a tax
254 deficiency is due to fraud, then a penalty will be added to the tax. The penalty is 50
255 percent of the deficiency due or \$500.00, whichever is greater. The penalty is computed
256 on the total amount of the deficiency due.

257
258 C. Fraud is the intentional misrepresentation of a material fact with the intent to evade
259 payment of tax which the person is believed to owe. The person must have had
260 knowledge of its falsity and intended that it be acted upon or accepted as the truth.

261
262 D. To establish civil fraud, the finance director must prove by clear and convincing
263 evidence that:

264
265 1. The tax liability was understated; and

266 2. The understatement was the result of an intent to evade tax.

267
268 E. An intent to evade tax may be demonstrated by any relevant evidence, including but
269 not limited to the following:

270
271 1. The person has provided false explanations regarding understated or omitted
272 amounts of marijuana cultivated or transferred;

273 2. The person has provided falsified or incomplete source documents;

274 3. The person has not justified an omission or understatement of a significant
275 amount of marijuana cultivated or transferred;

276 4. The person has substantially overstated a deduction and has failed to justify
277 the overstatement.

278
279 3.70.110 Tax lien.

280 A. If any person who is liable to pay a tax or license fee under this chapter neglects or
281 refuses to pay the tax or licensee fee after demand, the amount, including interest,
282 additional amounts, or assessable penalty together with costs, is a lien in favor of the
283 borough upon all property and rights to property, real or personal, belonging to that
284 person.

285
286 B. The lien imposed by this section arises upon delinquency and continues until the
287 amount is paid or a judgment against the person arising out of the liability is satisfied.

288
289 C. A lien arising out of a tax due under this chapter, including the penalties and interest
290 on the tax, shall be prior, paramount, and superior to all other liens, mortgages,
291 hypothecation, conveyances, and assignments, upon all real and personal property of
292 the person liable for the tax and upon all the real and personal property used with the
293 permission of the owner to carry on the business which is subject to the tax.

294
295 D. The lien on personal and real property may be enforced in a manner similar to that
296 provided by AS 29.45.300 through 29.45.480 for enforcement of real and personal
297 property tax liens.

298
299 3.70.120 Interest on unpaid tax.

300 In addition to any penalties imposed by this chapter, interest at the rate of twelve (12)
301 percent per annum shall be charged on the unpaid balance of delinquent taxes.

302
303 3.70.130 Taxpayer, licensee, or other person remedies.

304 A. Any person aggrieved by any action of the finance director in issuing, suspending,
305 revoking, or refusing to issue any license under this chapter or in fixing the amount of
306 taxes, penalties, interest, or costs under this chapter may apply to the borough clerk and
307 request a hearing within 30 days from the date the finance director mails the notice of the
308 finance director action. Upon timely application under this subsection or a hearing, the
309 assembly shall hold a hearing to determine whether a correction is warranted. Hearings
310 before the assembly under this subsection may, at the option of the assembly, be

311 conducted by an administrative hearing officer designated by the assembly. The hearing
312 officer shall conduct the hearing and prepare findings and conclusions. These findings
313 and conclusions must be forwarded to the assembly for adoption, rejection, or
314 modification and issuance of a final order or decision by the assembly. An application for
315 a hearing must notify the borough clerk of the specific action complained of and amount
316 of tax, interest, cost, or penalty contested and the reason it is contested. After receipt of
317 a written decision by the assembly, a person may appeal to the Superior Court of the
318 Third Judicial District in accordance with the Alaska Appellate Court rules. The person
319 shall be given access to the department's file in the matter for preparation of the appeal.

320
321 B. A request for appeal is filed on the date it is personally delivered, or is delivered to the
322 borough clerk by the United States Postal Service, the date of the postmark stamped on
323 the properly addressed cover in which the request is mailed. If the due date falls on
324 Saturday, Sunday, or a borough observed holiday, the due date is the next working day.
325 A current mailing address must be provided to the borough clerk with the request for
326 appeal, and any change in mailing address after the request for appeal is filed must be
327 reported to the borough clerk.

328
329 C. If the notice to the person pursuant to subsection (A) of this section shows an amount
330 due, the uncontested portion of the amount due must be paid within 30 days after the
331 date of the notice. If the uncontested amount is not paid within 30 days, collection action
332 will be taken on that amount even if the person has filed a request for appeal. Payment of
333 the total amount due may be made any time before the hearing. If the finance director has
334 reason to believe that collection of the total amount due might jeopardize by delay,
335 immediate payment of the total amount will be demanded and the finance director may
336 pursue any collection remedies provided by law. Payment in full does not affect the
337 person's right to a hearing.

338
339 D. If a person requests a hearing and fails to appear at the hearing, the assembly or
340 hearing officer may issue a decision without taking evidence from that person, unless
341 that person shows reasonable cause for failure to appear within seven days after the
342 date scheduled for the hearing.

343
344 E. Taxes, licenses fees, penalties and interest declared to be due in the final
345 administrative decision must be paid within thirty (30) days after the date of the decision,
346 or a bond must be filed with the court in accordance with the Alaska Court Rules of
347 Appellate Procedures.

348 3.70.140 Inspection and maintenance of documents and records.

349 A. Marijuana cultivation facilities shall keep complete and accurate records to support
350 the information to be included in the monthly tax returns required by this chapter,
351 including information regarding transfers. The records must include an accounting that
352 inventories live plants, trimmings, and any dried product on the first and last day of each
353 month including:
354
355

356 1. An invoice, sales receipt or other record memorializing the transfer of marijuana
357 from a marijuana cultivation facility, which must separately state the amount of
358 tax due after the sale or transfer.

359
360 B. Any person selling marijuana at a retail marijuana store who cannot produce records
361 showing taxes were paid on any marijuana in their possession are secondarily liable for
362 the unpaid tax on marijuana.

363
364 C. Persons subject to the chapter shall keep such other documents and records as the
365 finance director prescribes.

366
367 D. The finance director may, after twenty-four (24) hour notice and during business
368 hours, enter the business premises of a licensee under this chapter, so far as it may be
369 necessary for the purpose of examining such products and the related business records.

370
371 3.70.150 Administrative regulations.

372 The finance director may adopt policies and procedures providing for the application and
373 interpretation of this chapter and provide forms for reporting and collecting the tax
374 imposed by this chapter.

375
376 3.70.160 Confidentiality of records.

377 A. All tax returns, documents, records, and/or reports filed with the borough pursuant to
378 this chapter and all data obtained from tax returns, documents, records, and/or reports
379 are confidential as provided by KIBC 2.40.100 and may not be released for inspection by
380 any person except the licensee, mayor, treasurer, borough attorney, or the assembly;
381 provided, however, that such data may be released upon court order.

382
383 B. It is the duty of the borough clerk to safely keep tax returns, documents, records,
384 and/or reports and all data thereof secure from public and private inspection except as
385 provided by this chapter.

386
387 C. This section does not prohibit the borough from compiling and publishing statistical
388 analysis concerning the data submitted; provided, that no identification of particular tax
389 returns, documents, records, and/or reports is made. Nothing in this section shall be
390 deemed to prohibit the internal auditor from examining the tax returns, documents,
391 records, and/or reports; provided, that no information obtained from specific or identified
392 tax returns shall be made available to persons other than those authorized to review
393 them under subsection (A) of this section.

394
395 **Chapter 5.02**
396 **MARIJUANA BUSINESSES**

397
398 ~~* Code reviser's note: Section 2 of Ord. FY2016-17A reads, "The sunset date of February 28,~~
399 ~~2017 established by Ordinance FY 2016-17 is hereby amended to April 30, 2017." *~~

401 ~~5.02.010 Marijuana businesses prohibited.~~

402 ~~The operation of marijuana cultivation facilities, marijuana product manufacturing facilities,~~
403 ~~marijuana testing facilities, and retail marijuana stores anywhere within the Kodiak Island~~
404 ~~Borough is hereby prohibited. [Ord. FY2016-17 §4, 2016].~~

405
406 ~~5.02.020 Enforcement.~~

407 ~~A. A violation of a provision of this chapter is an offense punishable by a penalty not to exceed a~~
408 ~~fine of \$1,000, in addition to the surcharge required under AS 12.55.039. Each day that a~~
409 ~~violation continues constitutes a separate violation and is subject to a separate fine.~~

410
411 ~~B. Notwithstanding the availability of any other remedy provided by the provisions of this code,~~
412 ~~the borough or any person aggrieved by a violation of this chapter may institute a civil action for~~
413 ~~injunctive relief to enforce these provisions in any court of competent jurisdiction. [Ord. FY2016-~~
414 ~~17 §4, 2016].~~

415
416 5.02.010 Prohibitions.

417 5.02.020 Cooperation with State Marijuana Control Board.

418 5.02.030 State license renewal procedure.

419 5.02.040 New state license and transfer procedure.

420 5.02.050 Borough license for marijuana businesses—general.

421 5.02.060 Issuance of borough license for marijuana businesses.

422 5.02.070 Renewal of borough license for marijuana businesses.

423 5.02.080 Ownership change and transfer of borough license for marijuana businesses.

424 5.02.090 Suspension or revocation of license.

425 5.02.100 Fees.

426
427 5.02.010 Prohibitions.

428 The commercial manufacture or sale of edible marijuana products as defined by state law
429 is prohibited.

430
431 5.02.020 Cooperation with State Marijuana Control Board.

432 It is declared the policy of the borough to cooperate with and aid the Marijuana Control
433 Board for the State of Alaska in determining the fitness of applicants requesting a
434 transfer, renewal, or issuance of a new marijuana business license.

435
436 5.02.030 State license renewal procedure.

437 A. Upon receipt of notice from the Marijuana Control Board of the board's receipt of
438 intent to approve the renewal of a marijuana business license:

- 439
440 1. The clerk shall investigate to determine if the borough has an interest which
441 can be protected by protesting the approval of the application for renewal; and
442 2. The clerk shall check with the Kodiak Police Department and Alaska State
443 Troopers on the number of trouble reports at the place of business.
444

445 B. If the clerk determines that the borough has no interest in protesting the renewal, the
446 clerk shall advise the Marijuana Control Board of continued nonobjection to renewal in
447 writing. If it is determined that the renewal could be protested based on unpaid taxes or
448 trouble reports, it shall be scheduled for review by the borough assembly.

449
450 5.02.040 New state license and transfer procedure.

451 A. Upon receipt of notice from the Marijuana Control Board of the board's receipt of an
452 application or intent to approve the transfer or issuance of a new marijuana business
453 license:

454
455 1. The clerk shall investigate to determine if the borough has an interest which
456 can be protected by protesting the approval of the application for transfer or
457 issuance of a new marijuana business license;

458 2. The clerk shall check with the state troopers on the number of trouble reports at
459 the place of business;

460 3. The clerk shall duly advertise and place the matter of the application upon the
461 agenda for the next meeting of the assembly in order that citizens may express
462 their desires as to whether or not the assembly should approve or protest the
463 transfer or issuance of the marijuana business license; and

464 4. The notice of intent to establish a new marijuana business license or transfer of
465 location of an existing license shall be mailed to each landowner within 1,500 feet
466 of the proposed location by the clerk. A transfer from one person to another of a
467 marijuana business license, even if the location stays the same, shall be
468 considered a request for a new marijuana business license by the Kodiak Island
469 Borough. The applicant shall pay fees based on the adopted schedule of fees.

470
471 B. The assembly, after public hearing, shall determine by motion if a protest to the
472 application is to be lodged with the Alaska Marijuana Control Board. If a protest is
473 lodged, the manager and attorney are authorized to use any document or evidence
474 necessary to effectively advance the position of the borough at any hearing before the
475 Alaska Marijuana Control Board.

476
477 5.02.050 Borough license for marijuana businesses—general.

478 A. A license required by this chapter is in addition to any other license required by law.

479
480 B. A license issued by the borough shall include:

481
482 1. The name and address of the licensee;

483 2. The type of business to be conducted;

484 3. The address at which the business is conducted;

485 4. A license number; and

486 5. The year for which the license is issued.

487
488 C. The finance director may refuse to issue a license if there is reasonable cause to
489 believe that the applicant has willfully withheld information or if there is reasonable

490 cause to believe that information submitted in the application is false, misleading, or
491 otherwise not made in good faith.

492
493 D. A license issued under this chapter shall be prominently displayed at the licensee's
494 place of business.

495
496 E. A business whose license is lost, stolen, or defaced shall immediately file an
497 application with the finance department for reissuance of the license for the balance of
498 the unexpired year.

500 5.02.060 Issuance of borough license for marijuana businesses.

501
502 A. Marijuana businesses are required to obtain a license from the borough finance
503 department. In order to obtain this license an application must:

- 504
- 505 1. Complete a licensing application form provided by the finance department;
- 506 2. Provide proof of initial zoning compliance, issued per KIBC 17.15.060;
- 507 3. Provide a copy of the State of Alaska Marijuana Business license issued by the
508 Alaska Marijuana Control Board;
- 509 4. Provide a copy of the certificate(s) of registration for marijuana-specific taxes
510 imposed in applicable jurisdictions; and
- 511 5. Pay licensing fee per KIBC 5.02.100.

512
513 5.02.070 Renewal of borough license for marijuana businesses.

514
515 A. Marijuana businesses are required to renew their marijuana business license annually
516 with the finance department. In order to renew their license a marijuana business must:

- 517
- 518 1. Provide a copy of the State of Alaska marijuana business license renewal
519 issued by the Alaska Marijuana Control Board; and
- 520 2. Pay license renewal fee per KIBC 5.02.100.

521
522 B. Marijuana business license renewal must occur prior to August 31 each calendar year.
523 On or before June 30 each year, the finance director shall send written renewal notices to
524 licensees at the address on file with the finance department.

525
526 C. A licensee is not excused from filing a renewal application as required in this section,
527 even if the licensee fails to receive a renewal notice from the finance director.

528
529 D. Exceptions to KIBC 5.02.070(B) may be made on a case by case basis, based on the
530 status of the marijuana business' license renewal application with the Alaska Marijuana
531 Control Board.

532
533 5.02.080 Ownership change and transfer of borough license for marijuana businesses.

534 A. A license under this chapter is not transferrable and expires on the date of an
535 ownership change.

536
537 B. Transferors must surrender all licenses not later than 5 days after the effective date of
538 an ownership change.

539
540 C. Transferees must obtain a license per KIBC 5.02.060. Transferees must provide proof
541 of conveyed interest.

542
543 5.02.090 Suspension or revocation of license.

544 A. A licensee shall surrender a license with 5 days after:

- 545
546 1. A revocation of license;
547 2. A cessation of business;
548 3. A change of ownership; or
549 4. A change of place of business.

550
551 B. The finance director may suspend or revoke a license under this chapter:

- 552
553 1. For violation of this chapter or a regulation of the borough adopted pursuant to
554 this chapter; or
555 2. If a licensee ceases to act in the capacity for which the license was issued.

556
557 C. No marijuana business whose license is suspended or revoked shall operate during
558 suspension of revocation. No disciplinary proceeding or action is barred or abated by
559 the expiration, surrender, or renewal of a license issued under this chapter.

560
561 D. The borough clerk will inform the Alaska Marijuana Control Board of a licensee's
562 failure to pay tax due or to file a return as required by KIBC 3.70.050 and will initiate
563 license suspension or revocation proceedings by filing an accusation as provided in AS
564 17.38.090.

565
566 5.02.100 Fees.

567
568 A. A part of the costs for processing marijuana business licenses shall be covered by a
569 fee payable to the borough and shall be paid at the time of licensing. These fees will be
570 established annually by resolution of the assembly.

571
572 B. The finance director shall not refund any license fee paid pursuant to this chapter
573 upon the surrender or revocation of a license after the beginning of the license year, with
574 the exception that upon application, the finance director will refund a license fee shown
575 to have been paid or collected in error.

576
577 **Chapter 17.15**

578 **GENERAL PROVISIONS AND USE REGULATIONS**

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17.15.120 Buffers for marijuana businesses
In addition to any buffers imposed by any other applicable state or federal law, marijuana businesses may not be established on or within 500 feet of school grounds.

**Chapter 17.20
FEES**

17.20.010 Fees.

A. A part of the costs for maps, legal publications, notices to affected property owners, and other administrative expenses involved in processing land use change applications shall be covered by a fee, established by resolution of the assembly, payable to the borough. The fees apply to the following:

1. ~~A.~~ Conditional use permit;
2. ~~B.~~ Contract zoning;
3. ~~C.~~ Planning and zoning commission review;
4. ~~D.~~ Variance; ~~and~~
5. ~~E.~~ Zoning change; ~~and~~
6. **Zoning compliance permit.**

**Chapter 17.25
Definitions**

17.25.020 A definitions.

“Agricultural activities” means the production, keeping, or maintenance, for sale, lease, or personal use, of plants and animals useful to people. This does not include any uses involving or related to commercial marijuana activities.

“Airport elevation” means the established elevation of the highest point of the usable landing area.

Airport, Municipal. “Municipal airport” means the City of Kodiak Municipal Airport and Lilly Lake Airport, Utility. “Utility airport” means any airport in the borough designed and/or constructed to serve aircraft in approach category A (speed less than 91 knots).

“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 the construction, location, or use classification.

Apartment House. For “apartment house,” see “Dwelling, multiple-family,” KIBC 17.25.050.

“Approach surface” means an approach surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of a runway. The inner edge of the approach surface is the same width as the runway and it expands uniformly to a width of 1,500 feet of each end of the runway. The approach surface extends for a horizontal distance of 5,000 feet at a slope of 20:1. No building or structure may be constructed or erected nor may any other object be stored or placed in such a manner as to protrude into the approach surfaces.

623 A. The approach surfaces for the municipal airport extend upward and outward from the south
624 end of the existing lake surface (towards Larch Street) and the north end of the gravel runway
625 (Von Scheele Way) only.

626 "Automobile wrecking" means the dismantling of used motor vehicles or trailers or the storage or
627 sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles.

628
629 **17.25.140 M definitions**

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

637 "Marijuana Cultivation, Limited" means a legally licensed limited cultivation facility as
638 defined by state law. State law dictates that an area less than 500 square feet may be
639 under cultivation.

640 "Marijuana Cultivation, Standard" means a legally licensed standard cultivation facility
641 as defined by state law. No limit is set by state law on size of area under cultivation.

642 "Marijuana manufacturing facility" means a legally licensed commercial marijuana
643 product manufacturing facility as defined by state law, which can purchase marijuana,
644 manufacture, prepare, and package marijuana products, and sell marijuana and
645 marijuana products to other marijuana product manufacturing facilities and to retail
646 marijuana stores. These facilities may not sell marijuana products to consumers.

647 "Marijuana retail store" means a legally licensed commercial retail marijuana store as
648 defined by state law. A marijuana retail store may sell marijuana accessories as defined
649 by state law.

650 "Marijuana testing facility" means a legally licensed commercial marijuana testing facility
651 defined by state law that is registered to analyze and certify the safety and potency of
652 marijuana.

653 "Motel" means a group of one or more detached or semidetached buildings containing two or
654 more individual dwelling units and/or guest rooms, designed for or used temporarily by
655 automobile tourists or transients, with a garage attached or parking space conveniently located
656 to each unit, including groups designated as auto courts, motor lodges, or tourist courts.

657
658 **Chapter 17.50**
659 **C – CONSERVATION DISTRICT**

660
661 **17.50.020 Permitted principal uses and structures.**

662 The following land uses and activities are permitted in the conservation district:

- 663 A. All of the permitted principal uses and structures in the NU natural use zoning district;
664 B. Agricultural activities and related structures, including commercial livestock grazing; with a
665 written conservation plan between the land owner or lease holder and the Kodiak soil and water
666 conservation district, in those areas historically established for livestock grazing consisting of

- 667 the northeast portion of Kodiak Island east of a line drawn from Crag Point on Sharatin Bay to
668 the mouth of Wild Creek in Ugak Bay, and including Chirikof Island and Sitkinak Island;
669 C. Commercial fishing activities and related structures, including mariculture activities and
670 related structures;
671 D. Commercial guiding and/or outfitting activities (e.g., hunting, fishing, photography, etc.) and
672 related structures (e.g., lodges) containing provisions for no more than six clients;
673 E. Parks;
674 F. Recreational activities (including recreational mining activities);
675 G. Single-family dwellings/recreational cabins and associated home occupations;
676 H. Timber harvesting activities and transportation and utility facilities constructed in support of
677 permitted timber harvesting activities;
678 I. Churches;
679 J. Bed and breakfasts;
680 K. Vacation homes; ~~and~~
681 L. Hoop houses;
682 M. Marijuana cultivation, limited; and
683 N. Marijuana cultivation, standard (lots equal to or greater than 5 acres).

684
685 **17.50.040 Conditional Uses**

686 The following land uses and activities may be allowed by obtaining a conditional use permit in
687 accordance with the provisions of Chapter 17.200 KIBC:

- 688 A. All of the conditional uses in the NU natural use zoning district;
689 B. Airstrips;
690 C. Commercial livestock grazing, excluding those areas historically established for livestock
691 grazing as described in KIBC17.50.020(B), where it is a permitted use;
692 D. Lodges that have provisions for more than six clients;
693 E. Logging camps and timber harvesting support facilities (e.g., log transfer facilities), including
694 timber products processing facilities;
695 F. Nonrecreational mineral extraction activities and related structures;
696 G. Seafood processing facilities and related structures;
697 H. Transportation and utility facilities not otherwise permitted and not otherwise used in
698 conjunction with permitted uses (e.g., roads, pipelines, communications facilities, etc.); ~~and~~
699 I. Recreational vehicle parks; ~~and~~
700 J. Marijuana cultivation, standard (lots less than 5 acres).

701
702 **Chapter 17.60**

703 **RR2 – RURAL RESIDENTIAL TWO DISTRICT**

704
705 **17.60.030 Conditional uses.**

706 The following land uses may be allowed by obtaining a conditional use permit in accordance
707 with the provisions of Chapter 17.200 KIBC:

- 708
709 A. Fireworks stands; ~~and~~
710 B. Recreational vehicle parks; ~~and~~
711 C. Marijuana cultivation, limited (lots equal to or greater than 2 acres).

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Chapter 17.70
RR1 – RURAL RESIDENTIAL ONE DISTRICT

17.70.030 Conditional uses.

The following land uses may be allowed by obtaining a conditional use permit in accordance with the provisions of Chapter 17.200 KIBC:

- A. Fireworks stands; ~~and~~
- B. Recreational vehicle parks; and
- C. Marijuana cultivation, limited (lots equal to or greater than 40,000 square feet).

Chapter 17.90
B – BUSINESS DISTRICT

17.90.020 Permitted uses.

The following land uses and activities are permitted in the business district:

- A. Accessory buildings;
- B. Assembly halls;
- C. Art galleries;
- D. Automobile repair garages and dealerships;
- E. Banks;
- F. Building material suppliers;
- G. Dry-cleaning establishments;
- H. Eating and drinking establishments;
- I. Fraternal organizations and private clubs;
- J. Funeral parlors;
- K. Gasoline service stations;
- L. Government offices;
- M. Hotels;
- N. Laundry establishments;
- O. Libraries;
- P. Machine shops;
- Q. Marinas and boat moorage;
- R. Mini-warehouses;
- S. Motels;
- T. Multiple-family dwellings;
- U. Museums;
- V. Offices;
- W. Outdoor storage;
- X. Printing shops;
- Y. Professional offices and clinics;
- Z. Public parks and open spaces;
- AA. Recreational related uses;
- BB. Retail stores and services;

757 CC. Single-family and two-family dwellings, if located within a structure containing a permitted
758 business use, not exceeding 50 percent of the area of the structure, and not located on the
759 street level of the structure except that an owner-occupied single-family dwelling may be
760 allowed within a street level business structure, so long as the residential portion is
761 predominantly located in the rear of the structure (away from the commercial building facade(s)
762 for corner and multi-frontage lots), the use of the dwelling is subsidiary and incidental to the
763 principal commercial use, and there is no indication, other than a separate entrance on the
764 street level building facade, that a residential use is located within the structure;

765 DD. Theaters; ~~and~~

766 EE. Radio stations;

767 FF. Marijuana retail stores;

768 GG. Marijuana testing facilities; and

769 HH. Marijuana manufacturing facilities.

770

771 **17.90.030 Conditional uses.**

772 The following land uses and activities may be allowed by obtaining a conditional use permit in
773 accordance with the provisions of Chapter 17.200 KIBC:

774

775 A. Churches;

776 B. Hospitals;

777 C. Recreational vehicle parks;

778 D. Mobile home parks; ~~and~~

779 E. Warehouses;

780 F. Marijuana cultivation, limited; and

781 G. Marijuana cultivation, standard.

782

783

Chapter 17.105

784

I – INDUSTRIAL DISTRICT

785

786 **17.105.010 Permitted uses.**

787 The following uses of the land are permitted in the industrial district:

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789 A. All uses permitted in B business district, except residential;

790 B. Aircraft, automobile and truck assembly or remodeling;

791 C. Asphalt batch and mixing plant, manufacturing or refining;

792 D. Assembly of music and vending machines;

793 E. Auction business;

794 F. Beverage manufacturing;

795 G. Boat building, repair and storage;

796 H. Cabinet shops;

797 I. Concrete mixing batch plants;

798 J. Coal storage yards;

799 K. Dwelling units for a watchman or caretaker on the premises;

800 L. Dyeing plants;

801 M. Gravel or sand extraction;

- 802 N. Junkyards, wrecking, salvage or scrap metal operations;
- 803 O. Lumber mills and sawmills;
- 804 P. Lumberyard, building material manufacture or sales;
- 805 Q. Machine or blacksmith shops;
- 806 R. Manufacturing, servicing or repair of light consumer goods, such as appliances, batteries,
- 807 furniture, and garments;
- 808 S. Metal working or welding shops;
- 809 T. Motor freight terminals;
- 810 U. Outdoor storage;
- 811 V. Paint shops;
- 812 W. Public uses;
- 813 X. Rock crushers;
- 814 Y. Seafood processing establishments and their dormitories;
- 815 Z. Sewage treatment plants;
- 816 AA. Slaughterhouses;
- 817 BB. Steel fabrication shops or yards;
- 818 CC. Vehicle impound lots;
- 819 DD. Vocational or trade schools;
- 820 EE. Utility installations; ~~and~~
- 821 FF. Warehousing within an enclosed structure-;
- 822 GG. Marijuana cultivation, limited;
- 823 HH. Marijuana cultivation, standard;
- 824 II. Marijuana manufacturing facilities;
- 825 JJ. Marijuana retail stores; and
- 826 KK. Marijuana testing facilities.

Chapter 17.110
RB – RETAIL BUSINESS DISTRICT

17.110.020 Permitted principal uses and structures.

The following land uses and activities are permitted in the retail business district:

- 834 A. Automobile service stations;
- 835 B. Boardinghouses, hotels and motels;
- 836 C. Commercial recreational facilities (e.g., health clubs, racquetball courts, ice rinks, etc.);
- 837 D. Multifamily dwellings (not located on the street level of the structure);
- 838 E. Parks and playgrounds;
- 839 F. Retail stores and service shops (e.g., beauty shops, grocery stores, clinics, professional
- 840 offices, etc.);
- 841 G. Restaurants and bars;
- 842 H. Single-family and two-family dwellings, if located within a structure containing a permitted
- 843 business use, not exceeding 50 percent of the area of the structure, and not located on the
- 844 street level of the structure;
- 845 I. Schools/daycare facilities;
- 846 J. Shopping centers; ~~and~~

- 847 K. Theaters, auditoriums, community halls-;
- 848 L. Marijuana manufacturing facilities
- 849 M. Marijuana retail stores; and
- 850 N. Marijuana testing facilities.

851

852 **17.110.040 Conditional uses.**

853 The following land uses and activities may be allowed by obtaining a conditional use permit in

854 accordance with the provisions of Chapter 17.200 KIBC:

- 855
- 856 A. Automobile and boat sales, storage, and repair;
- 857 B. Churches;
- 858 C. Institutional facilities (e.g., hospitals, fire stations, group homes, correctional facilities, etc.);
- 859 D. Outdoor storage, when screened by a sight-obscuring fence a minimum of six feet in height;
- 860 E. Utility and service uses (e.g., substations, etc.);
- 861 F. Warehouses;
- 862 G. Wholesaling and distributing operations (excluding bulk fuel operations); ~~and~~
- 863 H. Recreational vehicle parks-;
- 864 I. Marijuana cultivation; limited; and
- 865 J. Marijuana cultivation, standard.

866

867 **Chapter 17.120**

868 **LI – LIGHT INDUSTRIAL DISTRICT**

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870 **17.120.020 Permitted principal uses and structures.**

871 The following land uses and activities are permitted in the light industrial district:

- 872
- 873 A. Automobile service stations;
- 874 B. Automobile and boat sales, storage, and repair;
- 875 C. Manufacturing (e.g., boat building, crab pot construction, cabinet making, welding and
- 876 fabrication, etc.);
- 877 D. Outdoor storage, when screened by a sight-obscuring fence a minimum of six feet in height;
- 878 E. Retail stores and service shops (e.g., beauty shops, clinics, grocery stores, professional
- 879 offices, etc.);
- 880 F. Warehouses;
- 881 G. Wholesaling and distributing operations (excluding bulk fuel operations);
- 882 H. A dwelling unit used by the owner or by a caretaker, manager, and family when located on
- 883 the premises where they are employed in such a capacity;
- 884 I. Utility and service uses (e.g., substations, etc.); ~~and~~
- 885 J. Kodiak Municipal Airport (landing strip and Lilly Lake float plane access), until adequate
- 886 replacement facilities are established-;
- 887 K. Marijuana cultivation, limited;
- 888 L. Marijuana cultivation, standard;
- 889 M. Marijuana manufacturing facilities;
- 890 N. Marijuana retail stores; and
- 891 O. Marijuana testing facilities.

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Effective Date: This ordinance takes effect upon adoption. (Note: KIBC 2.30.070 states an ordinance takes effect upon adoption or at a later date specified in the ordinance.)

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS TWENTIETH DAY OF APRIL, 2017.**

KODIAK ISLAND BOROUGH



Daniel A. Rohrer, Mayor

ATTEST:


Nova M. Javier, MMC, Clerk

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VOTES:

Ayes: Crow, LeDoux, Skinner, Smiley

Noes: Symmons, Townsend

Absent: Van Daele