

Chapter 7.01

MARIJUANA

Section:

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7.01.010 Consuming marijuana in a public place.

A. It is unlawful for any person to knowingly consume marijuana when the person is:

1. On, in or upon any public place, except as permitted by ordinance, regulation, statute or permit. This section is not intended to restrict a property owner from further restricting use of marijuana; or
2. Outdoors on property adjacent to a public place and without the consent of the owner or person in control thereof.

B. For purposes of this section, the definitions of the words and phrases below shall apply:

1. "Consume" shall have the meaning, in all conjugate forms, of "consumption" set forth in A.S. 17.38.900.

2. "Marijuana" shall have the meaning set forth in A.S. 17.38.900.

3. "Public place" as used in AS 17.38.020 and 17.38.040 and as used in this chapter, means a place to which the public or a substantial group of persons has access and includes highways, streets, alleys, rivers, lakes, transportation facilities, schools, places of amusement or business, parks, playgrounds, jails, and hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designated for actual residence. Notwithstanding the foregoing, a location with proper licensure in place and that is in compliance with applicable state law and regulation, city ordinance, including city licensure requirements, if any, and that is operating within the restrictions of such law and licensure is not a public place within the meaning of AS 17.38.020 and 17.38.040.

C. This section shall not apply where consumption is authorized by a state permit or license, or authorized by a city permit or lease.

D. Violation of section A.1. and/or A.2., above, is a minor offense with a fine of \$100 and an optional court appearance. The fine cannot be judicially reduced.

7.01.020 Allowing prohibited marijuana use prohibited.

It is unlawful for any person who owns or operates any restaurant, eatery, bar, hotel, other lodging, retail establishment, motor vehicle, or watercraft to permit marijuana use in violation of state or local law.

7.01.030 Marijuana use without consent of property owner.

A. Use or consumption of marijuana on private property without the affirmative consent of the property owner is prohibited.

B. If a person has a possessory interest in private property but is not the owner and the owner prohibits the use or consumption of marijuana, use or consumption of marijuana on or in that property is prohibited.

7.01.040 Marijuana in or on motor vehicles prohibited.

Marijuana use in or on motor vehicles, on the deck or in the wheelhouse of a watercraft, or in an aircraft is prohibited.

7.01.050 Marijuana possession and use under the age of twenty-one prohibited.

Possession and consumption of marijuana by persons less than twenty-one years of age are prohibited

7.01.060 Sale of non-marijuana items.

A. No person shall solicit or engage in the sale, barter or exchange of any item on the premises of a marijuana establishment, except that the licensee, or his or her employees or agents, may sell marijuana, marijuana products, and marijuana accessories.

B. It is unlawful for a marijuana establishment licensee, or his or her employees or agents, to permit a person who violates subsection (a) of this section to remain upon the premises. If the licensee, or his or her employees or agents, has actual or constructive knowledge of a violation of subsection (a) of this section, he or she permits that person to remain if he or she fails to demand that that person leave the premises, or if such a demand is refused, fails to notify the Kotzebue Police Department or Alaska State Troopers. As used in this subsection, "constructive knowledge" means the awareness a licensee,

or his or her employees or agents, could have through the diligence in the operation of the licensed premises.

C. The premises occupied by any marijuana establishment shall not be connected by a door, opening or other means of passage for the purpose of sales or for the purpose of passage by the general public to any other retail business establishment.

7.01.070 Prohibiting certain product manufacturing methods of marijuana concentrates.

Production of or attempting to produce a marijuana concentrate by a method of extraction using flammable or combustible chemicals including, but not limited to, butane, acetone, hexane, naphtha, ethanol, methanol, petroleum, ether, and alcohol constitutes marijuana product manufacturing and is prohibited except where such marijuana extraction is authorized by state law or regulation, permit, license, or registration or where such marijuana extraction is authorized by city ordinance, license, registration, or permit.

7.01.080 Violations and remedies.

A. It is unlawful for any person to consume or use marijuana in violation of this chapter.

B. Any person aggrieved by a violation of this chapter or the city may bring a civil action against a person who violates this chapter and may recover a civil penalty not to exceed three hundred dollars per violation – except if the violation is in violation of 7.01.010A.1. or 7.01.010A.2., in which case the civil penalty is set out in 7.01.010D. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.

Chapter 7.02

LOCAL REGULATORY AUTHORITY

Sections:

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- 7.02.080 Premises to be inspected.**
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7.02.010 Local Regulatory Authority Established

The Local Beverage Control Board, established and codified in Kotzebue Municipal Code Title 4, Alcohol, Chapter 4.01, Local Beverage Control Board (“LBCB”), is designated as the “local regulatory authority” as that term is used in Alaska Statutes, Chapter 17.38, The Regulation of Marijuana, 3 Alaska Administrative Code, Chapter 306, Regulation of Marijuana Industry and any other implementing legislation or rule making, within the corporate boundaries of the City of Kotzebue. (Ord. No. 19-01 §4 (Exhibit A), 8-16-2018)

7.02.020 Intent.

This chapter is intended to assist the State of Alaska by imposing local regulations that prevent:

1. The distribution of marijuana to minors;
2. Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. The diversion of marijuana from states and municipalities where it is legal under State and local law in some form to other states and municipalities where it is unlawful;
4. State-authorized and city-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Violence and the use of firearms in the cultivation and distribution of marijuana;
6. Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. The growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and
8. Marijuana possession or use on Federal property.

7.02.030 Purpose and scope of local regulatory authority.

A. Purpose. The purpose of this chapter is to provide for the municipal regulation of marijuana and marijuana establishments as allowed by state law. This chapter and any regulations promulgated related to marijuana establishments herein are adopted pursuant to the express authority granted by AS 17.38.110. This chapter and any regulations promulgated are intended to allow the city to regulate marijuana and marijuana establishments within the broadest range of municipal control contemplated by state statutes.

B. Local Control of Marijuana Establishments. The city may by ordinance exercise local control of marijuana establishments within the broadest range of municipal control contemplated by state law, including, but not limited to, the following types of local control:

1. Prohibit the operation of all or any type of marijuana establishments;
2. Regulate marijuana establishments where appropriate and, if necessary, in a manner more restrictive than state law;
3. Establish a local registration procedure for marijuana establishments;
4. Designate a local regulatory authority for the following purposes:
 - a. Receive half of the state registration application fee on behalf of the city; and,
 - b. Receive a copy of each state registration application and provide input to the state on such application.
5. Establish a schedule of annual operating fees;
6. Regulate the time and manner of operations of marijuana establishments;
7. Regulate the number of marijuana establishments;
8. Regulate the manner in which marijuana and marijuana products may be displayed by a retail marijuana store; and
9. Establish civil penalties for violations of city ordinances.

7.02.040 Duties and powers.

The Local Beverage Control Board, as set forth in KMC 7.02.010, shall function as the local regulatory authority for the purpose of the regulation of marijuana with the authority to, *inter alia*:

- A. Respond to notice from the state as required under 3 AAC 306.025(d)(2);
- B. Work with the state to collect fees and administer licensing and regulations; and,
- C. Draft recommended local laws, regulations and policies for city council approval, regulating marijuana and related facilities within the city.

7.02.050 Cooperation with state marijuana board.

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

7.02.060 Local regulatory authority review of issuance, renewal or transfer of licenses.

A. Upon receipt of notification from the State of Alaska Marijuana Control Board that the Board has before it an application for the issuance, renewal or transfer of a marijuana establishment license, the local regulatory authority shall determine whether to protest the proposed action and shall consider such of the following facts as the local regulatory authority believes are pertinent:

1. The character and public interests of the surrounding neighborhood;
2. The actual and potential law enforcement problems;
3. The concentration of other licenses of the same and other types in the area;
4. Whether the surrounding area experiences an unacceptable rate of marijuana abuse, or of crime or accidents in which marijuana is involved as a cause;

5. The comments and objections, if any, of the residents, owners, and inhabitants of the surrounding area;
6. The adequacy of parking facilities;
7. Unsafe conditions at the licenses premises, including, but not limited to, the safety of ingress to and/or egress from the premises;
8. Whether the applicant has timely permitted the inspection provided for in this chapter and whether the premises complies with local, state, and federal fire, health and other safety codes;
9. The degree of control the licensee has, or proposes to have, over the conduct of the licensed business;
10. The history of convictions of the applicants and affiliates of the applicants for:
 - a. Any felony,
 - b. Any criminal violation of state or local statute or regulation involving use or abuse of alcohol, marijuana or a controlled substance,
 - c. Any violation of AS Title 17 or regulations adopted by the Marijuana Control Board,
 - d. Any violation of the marijuana control laws of another state as a licensee of that state;
11. Whether the applicant or the applicant's affiliates are untrustworthy, unfit to conduct a licenses business, or constitute a potential source of harm to the public;
12. Whether the business operated under the license is, on the date the local regulatory authority considers the application, delinquent in the payment of any sales tax or penalty or interest on sales tax arising out of the operation of the licensed premises or any other operations of the applicant and affiliates of the applicant;
13. Whether there are any delinquent charges or assessments owing the city by the applicant or applicant's affiliates for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided for the benefit of the business conducted under the

license or for a service or an activity provided or conducted by the city at the request of or arising out of an activity of the business conducted under the license or any other businesses of the applicant or applicant's affiliates; and,

14. Any other factors the local regulatory authority determines are generally relevant or relevant to a particular application or in the public interest.

B. If the local regulatory authority decides to protest the issuance, renewal or transfer of a license it shall state the basis of the protest and the applicant shall be notified of such decision. If a protest is lodged, the local regulatory authority must set out its reasons in a written protest filed with the Board and copied to the applicant. The reasons stated by the local regulatory authority must be logical grounds for opposing the application or continued operation of the license and have a reasonable basis in fact. The protest may be based upon facts that render the particular application objectionable to the local regulatory authority, or may be based upon a general public policy. If based on a general public policy, the policy must have a reasonable basis in fact, may not be contrary to law, and may not be patently inapplicable to the particular application being protested. If a protest is lodged, the city attorney or designee is authorized to use any document or evidence necessary to advance effectively the position of the local regulatory authority at any hearing before the State Marijuana Control Board.

7.02.070 Pre-application conference and State of Alaska application review process.

A. An applicant for a marijuana business in the city must meet with the City Planner within thirty (30) days of the applicant's submission to the State of Alaska to discuss the proposed marijuana business and any issues that may affect the proposed marijuana business. This meeting is to provide for an exchange of general and preliminary information only and no statement made in such meeting by either the applicant or the City Planner shall be regarded as binding or authoritative.

B. The City Planner shall be responsible for reviewing all applications filed with the State of Alaska under AS 17.38 for the operation of marijuana establishments in the city once those applications have been submitted by the State of Alaska to the city for its local regulatory review. The city planner, or his/her designee, shall report to the local regulatory authority, within 30 days of receipt of an application regarding his/her review of the application.

7.02.080 Premises to be inspected.

Upon receipt of notification from the State of Alaska Marijuana Control Board that the Board has before it an application for the issuance, renewal or transfer of a marijuana establishment license, the city clerk shall notify the city fire chief and city police chief who shall inspect the proposed licenses premises and report the findings to the local regulatory authority. The applicant or other person in control of the premises shall permit such inspections at a reasonable time and upon reasonable notice. Until the report has been received by the local regulatory authority, the local regulatory authority will take no action which will waive its right to protest the application.

7.02.090 Regulations of hours of operation of a licensed marijuana business establishment.

Unless otherwise limited by State law, the city hereby exercises the power to provide for and regulate the hours of operation of licensed marijuana business establishments within the city.

7.02.100 City sales tax.

Notwithstanding possession of a valid marijuana license from the state, every person engaged in a business involving marijuana shall be subject to the provisions of KMC Chapter 3.20, Sales Tax, concerning sales tax licenses.

7.02.110 Video surveillance and camera recording.

A marijuana business in the city shall maintain a video surveillance and camera recording system as required by 3 AAC 306.715, 3 AAC 306.720 and 3 AAC 306.755. This surveillance recording must be preserved for a minimum of forty-eight (48) days in a format that may be easily accessed for viewing. All recorded images must clearly and accurately display the time and date, and must be archived in a format that does not permit alteration of the recorded image, so that the images can readily be authenticated. After 48 days, a marijuana establishment may erase video recordings, unless the licensee knows or should know of any pending criminal, civil, or administrative investigation for which the video recording may contain relevant information. The licensee shall allow local, state and federal law enforcement access to the video recordings upon request.

**7.02.120 Local regulatory authority
report of violations.**

If it is determined that a marijuana establishment has violated a provision of A.S. 17.38, 3 AAC 306.055, or a condition imposed on the licensee, the local regulatory authority shall notify the State of Alaska Marijuana Control Board.

7.02.130 Prohibitions.

All laws and regulations of the state of Alaska regarding marijuana establishments, marijuana sales, cultivation, distribution, testing, manufacturing, and consumption apply within the city unless otherwise stated in this chapter or chapter 7.01 of this Title.