

**Index**  
for  
**Materials**  
for  
**LBCB/LRA**  
**Meeting**  
**March 11, 2026**  
[Review of KMC Title 4 and Title 7]

# Index

for

Materials

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LBCB/LRA

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**Materials  
for  
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Meeting  
March 11, 2026**

**[Review of KMC Title 4 and Title 7]**

# **Kotzebue Municipal Code**

## **Title 4**

### **Alcohol**

**[Title Page]**

**Title 4**

**ALCOHOL\***

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\*Cross reference—Local beverage control board regulations, Rules and Regulations.

# **Kotzebue Municipal Code**

## **Title 4**

### **Chapter 4.01**

**[Local Beverage Control Board]**

## Chapter 4.01

### LOCAL BEVERAGE CONTROL BOARD

#### Sections:

- 4.01.010** Established.
- 4.01.020** Composition—Appointment—Qualifications.
- 4.01.030** Term.
- 4.01.040** Application process for appointment.
- 4.01.050** Meetings—Absence from.
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- 4.01.070** Removal of LBCB members.
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- 4.01.140** Rules, regulations and ordinances.
- 4.01.150** Powers and duties.
- 4.01.160** Rulemaking, resolutions and appeals.
- 4.01.170** Conflicts of interest.

#### **4.01.010** Established.

Pursuant to the local option change passed by the voters of Kotzebue on October 6, 2009 and certified by the city council on October 12, 2009, there is hereby established a local beverage control board, hereinafter LBCB, which shall set hours of operation, terms of operation and all other conditions, as allowed by law, for the operation of the city's delivery site, also known as a distribution site, for the delivery of alcoholic beverages being shipped to individuals residing in the city and for the sale of alcoholic beverages at any city-owned-and-operated liquor store, bar and/or restaurant, subject to review and approval by the city council. (Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.020** Composition—Appointment—Qualifications.

The LBCB shall consist of seven members appointed by the mayor, subject to city council confirmation and serving at the pleasure of the city council. Each LBCB member shall be a qualified city voter, at least twenty-one years of age at the time of appointment, a resident of the city for at least one year at the time of appointment and have no convictions for any alcohol-related offenses as set out in Titles 4, 11 and 28 of the Alaska Statutes or any type of felony within the ten years preceding appointment to the LBCB. There shall be no specifically designated seats on the LBCB. However, appointments shall be made by the mayor and confirmed by the city council in such a manner as to provide diversity and expertise for the LBCB to properly perform its powers and duties as set out in Section 4.01.150, below, using the application process set forth in Section 4.01.040, below.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.030** Term.

A LBCB member's term shall be three years and until a successor is appointed and qualified; provided, that the initial LBCB members shall draw lots to divide the membership substantially into thirds, to serve terms of one, two and three years, respectively, so that the terms of LBCB members will be staggered.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.040** Application process for appointment.

Residents of the city of Kotzebue who desire to serve on the LBCB shall complete an application on the form(s) provided by the city of Kotzebue. Such form(s) shall be returned to the city clerk along with any attachments required thereto. Completed application form(s) shall be forwarded to the mayor and city council for review, consideration and appointment as set out in Section 4.01.020, above.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

**4.01.050 Meetings—Absence from.**

A. No LBCB member shall be absent from any meetings of the LBCB, except for good and sufficient reason.

B. The reason shall be submitted in writing and approved by the LBCB. In the event of an emergency when a request to be excused cannot be submitted in advance, the request to be excused shall be considered at the next regular meeting. (Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

**4.01.060 Vacancies.**

A. A vacancy on the LBCB shall be filled as provided in Sections 4.01.020 and 4.01.140 for the remainder of the term of the former member.

B. A vacancy occurs when:

1. A confirmed appointee fails to qualify and assume the duties of the office within thirty days of confirmation;

2. A member departs the city intending to remain outside the city for sixty days or more;

3. A member submits a resignation accepted by the LBCB;

4. A member, due to incapacity or absence from the city, cannot attend LBCB meetings for sixty days or more;

5. A member is absent from three consecutive, regular LBCB meetings without the LBCB excusing any such absence.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

**4.01.070 Removal of LBCB members.**

A. Sitting members of the LBCB may be removed by a duly-passed resolution of the LBCB with approval of such removal confirmed by a majority vote of the city council. The city council, on its own initiative and without action by the LBCB, may also remove, with or without cause, a member of the LBCB by a majority vote of the city council.

B. Grounds for removal may include, but are not limited to, malfeasance of the LBCB member, misconduct by the LBCB member in the performance of LBCB duties and responsibilities, misconduct by the LBCB member unrelated to LBCB

duties and responsibilities that make the member's continued service on the LBCB inappropriate and detrimental to the best interests of the LBCB, the city council and/or the city of Kotzebue, negligence in carrying out LBCB duties by the member or reasonable suspicion that the LBCB member has violated any criminal statute(s) of the state of Alaska.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

**4.01.080 Compensation.**

LBCB members shall be compensated as provided by resolution of the city council and may be reimbursed for reasonable expenses incurred in the performance of their duties as pre-approved by the LBCB and city manager.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

**4.01.090 Agenda.**

A. All reports, communications, ordinances, resolutions, contract documents or other matters to be submitted to the LBCB for consideration shall be delivered to the LBCB, or its designee, seventy-two hours prior to the meeting. The agenda deadline will be at 12:00 p.m., noon, on the Monday prior to a Wednesday meeting for regular meetings, and twenty-four hours prior to meeting, for special meetings.

B. The chairman shall organize an agenda of such matters according to the order of business and each LBCB member shall receive a copy of the same.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

**4.01.100 Meetings—Quorum.**

A. Regular Meeting. The LBCB shall hold a regular meeting at least once a quarter on the second Wednesday of the month selected for this regular, quarterly meeting. The meeting place shall be the city council chambers in Kotzebue. The meetings shall start at 5:00 p.m. Notice of the regular, quarterly meeting shall be posted at least seven days prior to the LBCB meeting. Any change in the time and/or place of a meeting shall be

noticed at least forty-eight hours prior to said meeting. Four LBCB members constitute a quorum.

B. **Special Meetings.** Special meetings may be called by the chairman or at the request of two LBCB members upon not less than twenty-four hours' public notice. Written or oral notice shall be communicated to each member of the LBCB not less than twenty-four hours prior to the meeting. Quorum requirements for special meetings shall be the same as for regular meetings.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009; Ord. No. 13-02, § 4(Exh. C), 10-4-2012)

#### **4.01.110 Voting.**

All LBCB actions shall be by vote, after a quorum is established. A minimum of four LBCB members must vote in favor of the proposed action in order for the action to become authorized. (Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.120 Officers.**

Annually, the LBCB shall select a chairperson and vice-chairperson from its membership. The chairperson shall preside at meetings of the LBCB and shall represent the LBCB as directed by its members. The vice-chairperson shall act in the absence of the chairperson.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.130 Rules of procedure.**

The LBCB, by resolution, may adopt its own written rules of procedure, consistent with this chapter, governing the conduct of its proceedings. In all matters of procedure not governed by such rules or this title, Robert's Rules of Order shall govern.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.140 Rules, regulations and ordinances.**

By a duly-adopted resolution, the LBCB shall recommend rules, regulations and ordinances for the establishment and operation of a city-owned-and-operated delivery site for the delivery of alcoholic beverages being shipped to individuals resid-

ing in the city and for the establishment and operation of a city-owned-and-operated liquor store, bar and/or restaurant and for the sale of alcoholic beverages at such facilities. All LBCB rules and regulations shall be reviewed and approved by the city council prior to implementation. Copies of all rules, regulations and non-code ordinances regarding the LBCB shall be available to the public in the office of the city clerk. All code ordinances shall be codified in the Kotzebue Municipal Code.

(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.150 Powers and duties.**

The LBCB shall, subject to city council review and approval, have powers and duties to the maximum extent possible, subject to available funding, and as allowed by local, state and federal law, in order to:

A. Establish and operate a designated site for the delivery of alcoholic beverages being shipped to individuals in the city of Kotzebue;

B. Establish and operate a city-owned-and-operated liquor store, bar and/or restaurant licensed to serve beer and wine;

C. Set hours of operation for the city-owned-and-operated facilities designated in subsections A. and B., above;

D. Set the terms of operation for the city-owned-and-operated facilities designated in subsections A. and B., above;

E. Set all other conditions for the city-owned-and-operated facilities designated in subsections A. and B., above;

F. Set limits for the amount of alcoholic beverages that may be purchased from the city-owned-and-operated facilities designated in subsection B., above;

G. Participate in the statewide database established by Alaska Statute 04.06.095;

H. Monitor, to the extent possible and as funding is available, package store compliance with Alaska Statute 04.11.150 and report any violations to local and state law enforcement officials;

I. Monitor, to the extent possible and as funding is available, personal importation limits as set out in Alaska Statute 04.11.491(f)(1) and Alaska Statute 04.16.125(b)(1) or as modified pursuant to Alaska Statute 04.21.010(a)(1) and report any violations to local and state law enforcement officials;

J. Set all prices, fees and/or charges for alcoholic beverages delivered pursuant to subsection A., above, or purchased at the city-owned-and-operated facilities designated in subsection B., above;

K. Ensure that all duly-imposed, city use and/or sales taxes are collected on all alcoholic beverages imported into the city through the delivery site or sold at the city-owned-and-operated liquor store, bar and/or restaurant;

L. Prohibit the selling, giving or bartering of alcoholic beverages to a drunken person;

M. Pursue civil actions under Alaska Statute 04.16.047 against persons who are restricted from purchasing alcohol under Alaska Statute 04.16.160;

N. Enforce conditions of release, conditions of probation, conditions of parole or other such similar restrictions on the purchase or possession of alcoholic beverages imposed upon a person by a court or agency of competent jurisdiction;

O. Recommend, if necessary, to the city council an ordinance that would set limits on the monthly amounts of alcoholic beverages a person may import into the city as permitted by Alaska Statute 04.21.010(a)(1);

P. Ensure that all city employees who sell or serve alcoholic beverages at any city-owned-and-operated liquor store, bar and/or restaurant or check identification of a patron at such facilities or delivers alcoholic beverages to persons at the city's delivery site shall have completed an alcohol server education course as set out in Alaska Statute 04.21.025; and

Q. Exercise all other powers and duties not specifically listed above and to adopt any and all rules, regulations and procedures, subject to city council review and approval, that are necessary and appropriate for the ownership, management

and operation of the city-owned-and-operated facilities designated in subsections A. and B., above. (Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.160 Rulemaking, resolutions and appeals.**

A. Rulemaking. By resolution, the LBCB may adopt rules consistent with this title in order to conduct its business as set out in Section 4.01.130, above. Copies of these rules of procedure shall be available to the public in the office of the city clerk.

B. Resolutions. Acts of the LBCB that are required to be established by resolution shall be approved by a majority of the LBCB and signed by the chairman or vice-chairman of the LBCB.

C. Appeals. Any person or entity aggrieved by a decision of the LBCB may appeal the decision to the city council. Any decision of the LBCB is deemed final unless an appeal is filed within fifteen calendar days of the date of the LBCB decision with the city clerk. The notice of appeal must specifically state the reason for the appeal, relief sought and include payment of any appeal fee, if required. The city council shall hear and provide a decision on the appeal based upon the record developed before the LBCB and argument presented to the city council. No new evidence may be presented to the city council during the appeal process. The decision of the city council on the appeal shall be deemed final unless a timely appeal is filed with the Superior Court, Second Judicial District in Kotzebue, Alaska. (Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

#### **4.01.170 Conflicts of interest.**

A LBCB member shall not participate in deliberation or vote on a matter if:

A. The LBCB member or a member of his/her immediate family has a substantial financial interest in any matter before the LBCB; or

B. If it is foreseeable that the LBCB member or a member of his/her immediate family could profit in any material way through a favorable or unfavorable decision of the LBCB.

C. "Substantial financial interest" or "profit in any material way," for purposes of this section are a financial interest or profit that could be affected by an official action of the LBCB, which could reasonably result in a pecuniary gain or loss exceeding five hundred dollars.

D. Whether or not a conflict of interest exists requiring an excusal from participation in deliberation or voting on a matter shall be determined by the chairperson of the LBCB, whose decision may be overridden by a majority vote of the LBCB.  
(Ord. No. 10-02, § 2(Exh. A), 11-25-2009)

# **Kotzebue Municipal Code**

## **Title 4**

### **Chapter 4.02**

**[Alcoholic Beverage Delivery Site]**

## Chapter 4.02

### ALCOHOLIC BEVERAGE DELIVERY SITE

#### Sections:

- 4.02.010 Definitions.
- 4.02.020 Establishment.
- 4.02.030 Notice of establishment.
- 4.02.040 Delivery site operation responsibility.
- 4.02.050 Delivery site hours of operation.
- 4.02.060 Importation limits.
- 4.02.070 Delivery to alcohol delivery site.
- 4.02.080 Receipt and processing—Package store shipments.
- 4.02.090 Receipt and delivery—Other shipments.
- 4.02.100 Re-delivery of alcoholic beverages.
- 4.02.110 Transfer of undelivered alcoholic beverages.
- 4.02.120 Permit.
- 4.02.130 Appeals to LBCB.
- 4.02.140 Use and possession of permit.
- 4.02.150 Permit revocation or suspension.
- 4.02.160 Fees, charges and storage limits.
- 4.02.170 Penalties for violations.
- 4.02.180 Severability.

#### 4.02.010 Definitions.

When used in this chapter, the following words and phrases have the meanings given unless the context in which the word or phrase is used clearly indicates a different meaning was intended.

A. "Alcoholic beverage" means a spirituous, vinous, malt or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by a person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially.

B. "ABC board" means the Alaska Alcoholic Beverage Control Board.

C. "City delivery site" means a delivery site established and operated by the city.

D. "Common carrier" means a motor vehicle, watercraft, aircraft or railroad car available for public hire to transport freight or passengers.

E. "Delivery site," "alcohol delivery site" and "alcoholic beverage delivery site" refer to a designated delivery site or a city delivery site.

F. "Designated receiving site" means a common carrier that has been designated as a receiving site pursuant to Section 4.02.020.C.

G. "Distilled spirits" shall have the same meaning as is applied to the phrase in Title 4 of the Alaska Statutes.

H. "Domicile" means the place that the person has established as a residence in Kotzebue which is the person's only home and is the place to which the person intends to return whenever the person is away.

I. "Drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into the person's body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the over consumption of alcoholic beverages.

J. "Import" means to bring personal property into the city by any means of transportation,

whether transported while in the possession or control of the owner or intended recipient or transported in response to the request or arrangements made by or for the owner or intended recipient, but does not include personal property brought into the city by a common carrier that remains in control and possession of a common carrier until it is transported outside the city by a common carrier.

K. "Local beverage control board" means the local beverage control board established by Chapter 4.01 of the Kotzebue Municipal Code and shall be referred to herein as the "LBCB."

L. "Malt beverage" shall have the same meaning as is applied to the words in Title 4 of the Alaska Statutes.

M. "Minimum permitted delivery time" means the time between the date the delivery site mails or otherwise gives notice to a permittee of the arrival of alcoholic beverages for the permittee and the twenty-second day following the day of notice.

N. "Permit" means a permit issued under this chapter and/or Chapter 4.03.

O. "Permittee" means an individual holding a current, valid permit issued under this chapter and/or Chapter 4.03.

P. "Site" and "delivery site" mean the Kotzebue alcoholic beverage delivery site established or designated pursuant to this chapter.

Q. "Wine" shall have the same meaning as is applied to the word in Title 4 of the Alaska Statutes.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.020 Establishment.**

A. There is established the Kotzebue Alcoholic Beverage Delivery Site, which shall be at such location as the LBCB recommends and the city council approves. Designated receiving sites shall be such common carriers as are offered and accept a designation pursuant to subsection C., below. The alcoholic beverage delivery site should be in a well-lighted, developed area with reasonable public access and where it may be easily mon-

itored. The proximity to a police or other public safety facility that is manned twenty-four hours a day is encouraged.

B. The delivery site shall be clean, heated and well-secured against break-in or other unauthorized entry. Inside the delivery site there shall be an area adequate to securely store alcoholic beverages delivered to the site. The LBCB, after consulting with such advisors, security professionals, law enforcement agencies and other persons shall devise and have installed or constructed such security systems, areas or arrangements as may be appropriate to ensure the security and safekeeping of alcoholic beverages delivered to the city delivery site.

C. The LBCB shall examine the facilities of each common carrier serving the city of Kotzebue after receiving permission from the carrier. If the LBCB determines that the facilities and procedures of the carrier meet or could meet the requirements for a designated receiving site including specific security requirements set by the LBCB, the LBCB shall submit to the city council a report on each carrier facility inspected. Each report shall contain:

1. A summary of how freight and checked luggage, if applicable, is received, processed and delivered or released to the addressee;

2. How alcoholic beverages are received, processed and delivered or released to the addressee;

3. How undelivered freight, including alcoholic beverages, are disposed of;

4. A description of the facilities and procedures of the carrier that exist or that could be used to ensure that shipments of alcoholic beverages received will be secure and that delivery is made only to an individual authorized to receive the shipment; and

5. Changes that would need to be made to the carrier's facilities and procedures for it to be able to satisfactorily serve as a designated receiving site.

The LBCB shall discuss a preliminary draft report with the carrier and shall consider alternatives suggested by the carrier. The final report on

each carrier that indicates an interest in being designated as a receiving site shall be submitted to the city council. The report shall contain the recommendation of the LBCB as to whether the carrier should be offered a designation as a receiving site and the specific conditions that must be met by the carrier before the designation, if recommended by the LBCB, may become effective. The LBCB's recommendations may be implemented by the LBCB unless, at the city council meeting at which the LBCB's recommendations are scheduled for council consideration and action, the city council affirmatively rejects or disapproves the recommendations. The LBCB's recommendations shall be deemed approved unless there are four affirmative votes on a motion to reject the LBCB's recommendations.

D. The LBCB may impose new requirements and may modify existing requirements applicable to a designated receiving site to ensure effective operation of the delivery site system. The LBCB, following delivery of written notice of intent and reasons for revocation or other proposed action, and after an opportunity for the common carrier to be heard and respond to the reasons set out in the notice, may take action that the LBCB determines to be appropriate under the circumstances found. The action may be revocation of the designation of the common carrier as a receiving site or may be a lesser deprivation or burden on the common carrier.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.030 Notice of establishment.**

A. Upon the establishment of an alcohol delivery site under this chapter the LBCB shall give notice of the establishment to the ABC board. The notice shall include:

1. The name by which the site is to be known if other than the "Kotzebue Alcoholic Beverage Delivery Site;"
2. The address of the site;
3. A request that the ABC board notify all holders of package store licenses who are authorized to ship alcoholic beverages in response to a

written solicitation that the delivery site has been established and that all orders sent to a person in Kotzebue must thereafter be sent, shipping pre-paid, to the purchaser at the delivery site address, or to such other delivery sites as are approved by the City; and

4. A request that the ABC board provide to the delivery site current and updated lists of the names of persons who, under A.S. 04.15.200, are convicted after October 24, 1987 of a violation of A.S. 04.11.01.

B. The LBCB shall provide to common carriers, whether or not designated as a receiving site, copies of the notice required to be posted under subsection C. of this section. The notice shall set out the delivery requirements of this chapter and the maximum penalty that may be imposed for violations. The notice shall be appropriate for the carrier with respect to whether designated receiving sites are used and whether the carrier is or is not a designated receiving site.

C. Common carriers shall post the notice provided by the city under this section in one or more conspicuous places in each of the following locations:

1. Where cargo or baggage is handled;
2. On bulletin boards where notices to employees required by law are posted;
3. Where persons claiming baggage or receiving cargo shipments claim their baggage or shipments; and
4. Where baggage and cargo shipments are physically delivered to the traveler, shipper or claimant.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.040 Delivery site operation responsibility.**

A. As set forth in Section 4.01.150.A. of this title, the LBCB shall, subject to city council review and approval, have the power and duty to the maximum extent possible, subject to available funding, and as allowed by local, state and federal law, to establish and operate a delivery site.

B. A designated receiving site shall be operated by officers, employees or agents of the common carrier in accordance with this chapter and the conditions of the designation.

C. The LBCB shall prescribe rules, policies and procedures, as approved by the city council, which are consistent with the provisions of this chapter, as it determines to be appropriate. (Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.050 Delivery site hours of operation.**

A. The LBCB shall establish a schedule of days and hours of operation for the delivery site, through regulations. Unless otherwise required under conditions of a designation of a common carrier as a receiving site, the common carrier may establish its own days and hours of operation consistent with subsection B. below. The schedule shall be posted at each entrance to the delivery site.

B. The delivery site shall be open for receipt and redelivery of alcoholic beverages as established in regulations by the LBCB. The LBCB may establish a schedule for receipt of alcoholic beverages at a city delivery site that is different from the schedule for redelivery.

C. Through regulations, the LBCB may authorize additional, unscheduled hours of operation on a temporary basis to accommodate special situations. (Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.060 Importation limits.**

A. Within any calendar month, a person may not import into the city more than twelve gallons of malt beverages, twenty-four liters of wine and ten and one-half liters of distilled spirits, as set forth in A.S. 04.11.150(g).

B. A person may not import any amount of alcoholic beverage containing more than seventy-six percent alcohol by volume, as set out in A.S. 04.16.110. However, the LBCB, with city council approval, may impose a limit for distilled spirits of not less than forty percent or more than seventy-

six percent alcohol by volume as permitted by A.S. 04.21.010(a)(2).

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.070 Delivery to alcohol delivery site.**

A. All alcoholic beverages sent into the city by a package store shall be sent, shipping prepaid, and shall be addressed to the purchaser at the delivery site.

B. A person importing alcoholic beverages into the city in a quantity exceeding one liter of distilled spirits, or two liters of wine, or one gallon of malt beverage in a single day or single shipment shall ship such alcoholic beverages into the city, shipping prepaid, addressed to and for delivery to the delivery site. Said alcoholic beverages shall be shipped separately, in packages clearly marked as "alcoholic beverages" in lettering at least two inches high and drawn in lines one-quarter inch wide. Said shipments shall contain only alcoholic beverages and such alcoholic beverage shipments shall not be packed with other nonalcoholic beverage items. The person who is in possession of alcoholic beverages subject to this subsection B. at the time they are imported into the city or who is a common carrier that is not a designated receiving site and to which the shipment is transferred for delivery to the Kotzebue addressee, shall deliver or cause such alcoholic beverages to be delivered to a delivery site; provided, alcoholic beverages transported as checked baggage accompanying a traveler on a regularly scheduled air carrier that is not a designated receiving site may not be claimed by the traveler at the air terminal, but shall be delivered to a delivery site by the air or other common carrier immediately or at the earliest time the delivery site is next open to receive alcoholic beverages if the alcoholic beverages exceed one liter of distilled spirits, two liters of wine or one gallon of beer; amounts that are at or below these limits are not required to be delivered to or processed through a delivery site.

C. A person may not open, consume or transfer to another, any alcoholic beverage required to be delivered to the delivery site until after such

alcoholic beverage has been delivered as required by this section and redelivered to the purchaser or owner.

D. A person transporting alcoholic beverages into Kotzebue via common carrier shall comply with the labeling requirements in A.S. 04.16.125. (Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

**4.02.080 Receipt and processing—Package store shipments.**

A. Upon the receipt of alcoholic beverages shipped from a package store, the delivery site shall:

1. Receive the shipping container;
2. Note on the delivery site records and on any shipping document tendered at delivery any damage that appears to have occurred to the container or its contents and notify parties responsible for the damage;
3. Ensure that the date received, name of the purchaser and the invoice number are clearly marked on the shipping container;
4. Remove the invoice from the shipping container; however, if no invoice of the contents is provided, the delivery site shall prepare an inventory of the contents and that inventory shall be deemed the contents of the shipping container;
5. Record the quantities of each kind of alcoholic beverage contained in the shipping container and enter the quantities on the permittee's monthly record or on another log or record kept by the city;
6. Record sales or use tax and other information as may be required by the LBCB;
7. Determine whether the purchaser is authorized to receive the alcoholic beverages on the invoice; and
8. provide the purchaser with notice of receipt of the alcoholic beverages and the amount due the city for sales or use taxes, handling and storage fees and any other charges, levies, or taxes.

B. If the purchaser is not authorized to receive the alcoholic beverages, the alcoholic beverages may not be delivered to that person or to another person and the delivery site shall retain all

alcoholic beverages that cannot be delivered until the earlier of the time they may be lawfully delivered or until they are disposed of by the common carrier if held by a designated receiving site or until they are transferred to the city's package store for sale to an authorized purchaser under the provisions of this chapter, if held by a city delivery site.

C. If the purchaser is authorized to receive the alcoholic beverages, they shall be delivered to the person upon payment of all taxes, handling and storage fees, and other charges, levies or taxes owing.

D. The records created or maintained by a delivery site for the purpose of monitoring the amount of alcoholic beverages received by an individual within a month are confidential and are not public records. Such records shall be disclosed only to those delivery site employees who require access to such records for the purpose of making entries of new receipts or deliveries and to determine whether the person has or will exceed their monthly limits under KMC § 4.02.060. The city employee designated by the LBCB to consolidate the individual delivery records and issue the permits shall also have access to such records. All other access to the records shall be only as required by law and the LBCB regulations that establish procedures by which local, state and federal law enforcement may have access to delivery site and/or package store records. The provisions of this subsection apply to alcohol received or processed through a delivery site under Sections 4.02.080 and 4.02.090 and alcohol purchased under Chapter 4.03 of this title.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

**4.02.090 Receipt and delivery—Other shipments.**

A. Alcoholic beverages required to be delivered to the delivery site that are not delivered under Section 4.02.080 shall be delivered at the earliest opportunity by the person importing the alcoholic beverages or the person otherwise required under Section 4.02.070.B. to deliver the

alcoholic beverages to the delivery site. Upon delivery, the delivery site shall remove and examine the invoice and may require a container delivered to be opened for inspection. Based on the invoice or actual inspection, the delivery site shall make an inventory of the contents of each container and shall process the alcoholic beverages as provided in Section 4.02.080.A., except the addressee or owner shall be substituted for the purchaser.

B. If the owner or the person to whom the alcoholic beverages are addressed is not authorized to receive the alcoholic beverages, the alcoholic beverages may not be delivered to that person or to any other person and the delivery site shall retain the alcoholic beverages that cannot be delivered until the earlier of the time that they may be lawfully delivered or until they are disposed of by a common carrier held by a designated receiving site or are transferred to the city's package store for sale to an authorized purchaser.

C. If the owner or addressee is authorized to receive the alcoholic beverages, the alcoholic beverages shall be delivered only to the owner or addressee upon payment of all taxes, handling and storage fees and other charges, levies or taxes owing.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.100 Re-delivery of alcoholic beverages.**

A. Delivery of alcoholic beverages by the delivery site may occur only at the delivery site and may be made only by an authorized officer or employee of the city. Delivery by the designated receiving site to the delivery site may be made only by an officer, employee or agent of the common carrier authorized by the common carrier to make such deliveries.

B. The following persons are not authorized to receive alcoholic beverages and no delivery may be made to such person:

1. A person believed to be a drunken person by the delivery site employee in charge of the delivery site at the time of the delivery request is made;

2. A person who is unable to provide to the delivery site the person's current, valid permit;

3. A person who is unable to satisfy the delivery site employee by means of duly-issued, official identification, with such identification requirements as set by regulations approved by the LBCB, that he/she is the person to whom the permit was issued;

4. A person who has received during the current calendar month the maximum quantity of one or more of the types of alcoholic beverages permitted to the person under this chapter or Chapter 4.03; or who, upon delivery of the alcoholic beverages would exceed a limit established by this chapter or Chapter 4.03; provided so much of the beverages sought may be delivered to the extent the delivery does not cause the person to exceed their monthly limit for the alcoholic beverage as established by this chapter or Chapter 4.03;

5. A person who fails or refuses to pay all amounts owing the city with respect to the alcoholic beverages;

6. A person who, under A.S. 04.16.200 has been convicted within the preceding two years of a violation of A.S. 04.11.010;

7. For so long as the court order is in effect, a person whom a court has ordered not to consume or possess alcohol if the delivery site has been so notified by the Kotzebue Police Department;

8. For so long as the condition is in effect, a person who has been released from custody pending trial or who has been released on probation, parole or under similar circumstances, if a condition of the release is that the person not consume or possess alcoholic beverages if the delivery site has been so notified by the Kotzebue Police Department;

9. A person who is not able to satisfactorily prove that their domicile is the place shown on the permit; or

10. A person who has voluntarily placed himself/herself on a "no delivery list" on such terms and conditions as established by duly-adopted LBCB regulations.

C. An authorized delivery site employee may not deliver alcoholic beverages to a person who is not authorized to receive alcoholic beverages.

D. A person who is not authorized to receive alcoholic beverages may not receive them at the delivery site or elsewhere.

E. Before the delivery site may refuse delivery to a person for reasons set out in subsections B.6., 7. or 8., above, the delivery site must be in possession of a copy of the court order or judgment or either a copy of the conditioned release or written confirmation of the conditioned release and the terms of the conditions relating to alcohol consumption, or a confirmation by the court, the chief of police or the LBCB of the criminal judgment. The burden of showing that the order, condition of release or condition of probation or parole, above, is no longer in effect is upon the person to whom the order or condition or criminal judgment applied. The LBCB shall adopt regulations, as approved by the city council, for the implementation and enforcement of B.6., 7. and 8., above.

F. Alcoholic beverages not delivered to a permittee for any reason shall be held at the delivery site for not less than twenty-one days from the date of notice of availability to the permittee. After such time, the alcoholic beverages may be transferred to the city's package store as provided in Section 4.02.110.

G. Alcoholic beverages not delivered to the delivery site by a designated receiving site shall be retained and disposed of under laws applicable to the common carrier, or, if the common carrier elects, as provided for undelivered alcoholic beverages at a city delivery site.

H. A person who is refused delivery shall be provided with a written statement from the delivery site employee refusing delivery clearly stating the reason for the refusal to deliver and stating the date, if applicable, after which the alcoholic beverages may be transferred to the city's package store, if not sooner delivered. If the delivery is refused at the city delivery site or a designated receiving site that has elected under subsection G.,

above, to be bound by the city delivery site transfer procedures to the city's package store refuses to deliver to the city delivery site, the person whose delivery has been refused shall be informed of their right to appeal the refusal to deliver to the LBCB.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.110 Transfer of undelivered alcoholic beverages.**

A. Alcoholic beverages that have not been delivered within the minimum permitted delivery time may be transferred to the city's package store for sale to an authorized purchaser under the procedures set out in this section, with the exception of alcoholic beverages that are:

1. The subject of an appeal to the LBCB or the court under this chapter; or
2. The subject of a decision of the LBCB or a court for which the time for appeal of the decision has yet to expire, if prepayment of storage fees required under this section have been paid.

B. At any time following the expiration of the minimum permitted delivery time, the delivery site shall give notice to the purchaser or addressee of the alcoholic beverages for which the minimum permitted delivery time has expired. The notice shall identify the alcoholic beverages and shall inform the purchaser or addressee:

1. That the minimum permitted delivery time has expired; and
2. That after an additional seven days from the date the written notice is mailed, the delivery site will take action to transfer the undelivered beverages to the city's package store for sale to an authorized purchaser unless the permittee picks up the beverages, if authorized, prepays storage fees or files an appeal to the LBCB.

C. The permittee shall be notified that the permittee may file a written appeal at the delivery site not later than the close of business on the seventh day following the date the notice is mailed and that the timely filing of such an appeal will stay the transfer of the alcoholic beverages during the pendency of the appeal. At any time before or

after the filing of an appeal, and before the alcoholic beverages are transferred, the owner may make arrangements to have the alcoholic beverages shipped back to the package store that originally shipped the beverages to the delivery site; provided, all handling, storage and other delivery site charges and city taxes must be paid before the delivery site may release the beverages for reshipment. The arrangements for reshipment must include prepayment of all shipping and handling charges and assurances that the beverages will be in the possession of common carriers from the time released by the delivery site until delivered back to the package store.

D. Upon receipt of a timely-filed appeal, or a late appeal regarding alcoholic beverages that have not yet been transferred to the city's package store for sale to an authorized purchaser, the city delivery site shall segregate the undelivered alcoholic beverages subject to the appeal and note prominently on the container that the alcoholic beverages within the container are the subject of the appeal. The city delivery site shall note on the appeal the date and time received, shall retain a copy for its files and shall forward the original to the LBCB along with the copy of the records of the city delivery site showing all relevant activities relating to the alcoholic beverages and their non-delivery from the date of receipt of the alcoholic beverages at the delivery site through the date of receipt of the appeal.

E. Upon receipt of an appeal by the LBCB, the LBCB shall hear the appeal in the manner provided under Section 4.02.130.

F. Storage and applicable charges shall continue to accrue during the pendency of the appeal to the LBCB. If the LBCB determines that the alcoholic beverages should have been delivered when delivery was refused, storage and other related charges that accrued following the refusal to deliver shall be waived, provided the alcoholic beverages are delivered to the appellant within three delivery site operating days of the date the LBCB's decision is mailed or delivered to the appellant; provided, further, the appellant must be

qualified and authorized to receive the alcoholic beverages subject to the appeal at the time the appellant requests delivery of the alcoholic beverages at the delivery site.

G. If the LBCB determines that the refusal to deliver was appropriate, the appellant may appeal the LBCB's decision to the superior court as provided in the applicable Alaska Rules of Appellate Procedures. If the appellant intends to appeal the LBCB's decision to the superior court, the appellant may avoid the transfer of the alcoholic beverages to the city's package store, for sale to any other authorized person, by paying, within three delivery site operating days of the date of the LBCB's decision, all taxes and charges due on the alcoholic beverages from the date of the receipt through the thirty-third day following the appellant's receipt of the LBCB's written decision. If the appellant files a notice of appeal to the superior court of the LBCB's decision, and, in addition, serves a copy of the notice of appeal on the delivery site, with a prepayment for storage and other charges that will come due within the six months that follow the date of the notice of appeal, the delivery site may not transfer the alcoholic beverages to the city's package store for sale to any other authorized person and shall continue to store them for the period covered by their prepayment or until they are lawfully delivered to the appellant, whichever occurs first. If the alcoholic beverages have not been delivered to the appellant and the final decision of the superior court on the appeal has not been issued before the expiration of the period covered by the prepayment, the appellant shall pay for an additional six-month period. Upon the issuance of a final, appealable decision by the superior court, the alcoholic beverages shall be subject to the same procedures and prepayment requirements as applied upon delivery of the LBCB's decision to the appellant. If the alcoholic beverages are delivered to the appellant at any time prior to the expiration of a prepayment, the amount of the prepayment attributable to the time beyond the date of delivery shall be refunded to the appellant.

H. Upon the failure of a permittee to timely appeal or to make a prepayment or take other required action under this section to preserve his or her right to have the delivery site continue to store his or her alcoholic beverages, the person thereby forfeits all rights, title and claims to such alcoholic beverages and the alcoholic beverages may be transferred to the city's package store for sale to any other authorized person. Upon certification by an authorized delivery site employee that there is no pending appeal of the delivery refusal decision, or that the period covered by the last storage prepayment has expired, and that written notice of the expiration of the prepayment or appeal period was mailed to the appellant at least seven days prior to the date of the certification, the alcoholic beverages may be transferred to the city's package store for sale to any other authorized person.

I. The delivery site shall forward the certification of transfer to the LBCB. The delivery site shall maintain an inventory of all alcoholic beverages transferred to the city's package store for sale to an authorized person.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.120 Permit.**

A. Upon receipt of a complete application and a nonrefundable application fee in an amount set by the LBCB, the city employee designated by the LBCB shall issue an alcoholic beverage delivery permit to a person who meets the qualifications set out in this section. Permit applications must contain the mailing address or phone number at which the applicant may be notified of the arrival of alcoholic beverages at the delivery site and receive other notices required to be given under this chapter. The application shall contain the applicant's driver's license number, voter registration number and such other information as the LBCB may establish in regulations and/or the designated city employee may require as proof of domicile in Kotzebue and for identification purposes. Permits shall be numbered sequentially and shall be valid for a period of one year. Permits are

the property of the city of Kotzebue and may be revoked, suspended and/or surrendered to the city as provided by law, ordinance, statute and regulation. If a permit is lost by the permittee or must be replaced for any reason, a nonrefundable replacement fee in an amount set by the LBCB shall be paid by the permittee.

B. A permit may be renewed by a person who continues to meet the qualifications for a permit upon the filing of a renewal application accompanied by a nonrefundable renewal fee in an amount set by the LBCB and proof of the applicant's qualification for renewal. A lost, stolen or destroyed permit may be replaced under this renewal procedure.

C. To qualify for a permit, a person must:

1. Be at least twenty-one years of age;
2. Be domiciled within the city limits of the city of Kotzebue with proof of domicile as required by regulations established by the LBCB;
3. Not have any amounts owing to the city of Kotzebue for delivery site handling, storage, other delivery site charges, and/or sales/use taxes on alcoholic beverages;
4. Within two years of the date of the application not have been convicted of, pleaded guilty or no contest to a violation of:

(a) Any provision of Title 4 of the Alaska Statutes;

(b) A.S. 28.33.030, 28.35.030 or 28.35.032; or

(c) Any provision of federal law regulating the manufacture, possession, transportation, sale or use of alcoholic beverages or any provision of the Kotzebue Municipal Code involving the importation, sale, delivery, possession or use of alcohol.

5. Not be subject to a court order or conditions as set out, above, in Section 4.02.100.B.7. and B.8.; and

6. Not be a person who has been issued a permit under this chapter whose permit has been suspended or revoked unless the period of the revocation or suspension has expired and any fines paid in full and all conditions imposed have been met.

D. Upon receipt of a completed application and the required fee, the designated city employee shall undertake such investigation as may be necessary to verify statements and claims made in the application and separately provided proofs submitted by the applicant. If the designated city employee determines the applicant is qualified for a new permit or a renewal of an existing permit, designated city employee shall issue the permit and provide a copy of the permit and application to the alcohol delivery site. Permits may be delivered by the designated city employee only to the applicant in person and to no other person except to the qualified, designated agent of a physically disabled person who has been issued a disabled person's permit pursuant to Section 4.02.140.E., below.

E. If the designated city employee determines that an applicant is not qualified or that an essential claim, statement or proof is doubtful and unsupported by adequate, reliable evidence or other defect, the applicant shall have fourteen calendar days from the date the designated city employee mails the notice within which to submit documentation or other proof to overcome the deficiencies set out in the notice prepared by the designated city employee. If the designated city employee is satisfied that the person is qualified for a permit, the designated city employee shall issue the permit as provided in subsection D. of this section. If the designated city employee determines, based on the submissions by the applicant and the results of the investigation by the designated city employee that the applicant has not satisfactorily shown that the applicant is qualified for a permit, the designated city employee shall deny the permit and shall notify the applicant in writing of the denial and of the reasons for the denial. The denial of the permit may be appealed to the LBCB who shall hear the appeal on the record established by the designated city employee. The notice of denial from the designated city employee shall contain a statement advising the applicant of the right to appeal the denial to the LBCB by filing a written notice of

appeal to the LBCB within thirty days of the date the notice of denial is mailed by the designated city employee.

F. A person may not provide or make untrue or misleading statements or provide false, altered or misleading documents in connection with an application for a permit under this chapter. (Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.130 Appeals to LBCB.**

A. In an appeal by a permit applicant from a decision of the designated city employee, the LBCB shall hear the appeal on the record made by the designated city employee. New evidence that could have been provided to the designated city employee during the application process may not be submitted as a part of the appeal to the LBCB. After receiving written arguments or oral argument, if permitted by the LBCB, from the applicant and the designated city employee, the LBCB shall determine whether, upon the record before the designated city employee at the time the appealed decision was made, there was substantial evidence to support the decision of the designated city employee.

B. In an appeal from a decision of the delivery site to refuse delivery, confiscate a permit, or to take or refuse to take other action, the aggrieved person shall file a written notice of appeal with the delivery site within seven calendar days of the delivery or mailing of the decision unless a longer period of time is permitted under this chapter. The delivery site shall immediately forward the notice of appeal to the LBCB.

C. In all appeals, the LBCB shall provide notice to the appellant whether oral arguments and testimony will be permitted and the date:

1. Upon which oral arguments and oral testimony will be heard, if permitted;
2. By which additional documents, if permitted, must be received; and
3. By which written arguments must be received.

The LBCB shall inform the appellant where the record on appeal may be reviewed and shall provide a copy to the appellant upon request and payment of any copying charges that apply.

D. The LBCB shall schedule the receipt of argument, testimony and documents to ensure that the appellant has reasonable time to prepare and make submission to the LBCB. The first request by the appellant to extend a submission date or to reschedule an oral argument or testimony date shall be freely granted unless doing so would create a hardship for the designated city employee or the delivery site. Any additional extensions for appellant must be fully justified.

E. The LBCB may retain a hearing officer, who may be the city attorney or other appropriate city employee, to hear an appeal under this chapter. The hearing officer shall make scheduling and other procedural decisions and, after receipt of the written argument by the appellant and the designated city employee, shall prepare a proposed decision for the LBCB. The proposed decision by the LBCB or the hearing officer shall set out the evidence in the record upon which the decision is based, a conclusion and an appropriate order. If the LBCB does assign a hearing officer to hear an appeal, the LBCB may accept and sign the proposed decision of the hearing officer, redraft or modify it before signing it or refer it back to the hearing officer for further specified action. Upon signing of the decision, it becomes the LBCB's decision.

F. If the LBCB hears and decides the appeal, it shall prepare a written decision setting out the evidence relied upon, conclusions and an appropriate order.

G. The LBCB's decision may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure applicable to administrative decisions. The LBCB's decision shall contain such notice of the right of appeal as may be required by the Alaska Rules of Appellate Procedure.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.140 Use and possession of permit.**

A. A permittee may not authorize, permit or acquiesce in the use or possession, for any purpose, by another person of the permit issued to the permittee.

B. A permittee may not fail to prevent another person from possessing or using the city-issued permit of the permittee. It shall be a defense to a violation of this subsection if the permittee, upon discovery the loss of the permit or that the permit is in the possession of another person, immediately notified the city delivery site and the Kotzebue Police Department of the loss of the permit and the name of the person possessing the permit, if known.

C. A person other than the permittee may not possess or use or attempt to possess or use for any purpose, a permit issued under this chapter to another person.

D. The delivery site employee shall retain any permit displayed by a person who is not the permittee to whom the permit was issued.

E. Subsections A., B., C. and D. of this section do not apply when the permittee is a disabled person who has met the terms and conditions set by the LBCB for a disabled person's permit and who has been issued a disabled person's permit and the permit is in the possession of the person designated on the permit as the permittee's qualified agent the disabled person's qualified agent also has a valid permit under this chapter.

F. A person may not alter in any way a permit issued under this chapter.

G. A person may not make, by any means, an imitation or copy of a permit issued or authorized to be issued, under this chapter.

H. A person may not use or attempt to use for identification or any similar purpose a permit that has been altered or that is an imitation or copy of a permit issued or authorized to be issued, under this chapter.

I. A delivery site employee shall confiscate and retain any altered, copy or imitation permit displayed by the holder.

J. A delivery site employee, upon receiving the permit, shall confiscate and retain the permit of a person whose permit has been revoked or suspended.

K. The LBCB shall be promptly notified of the confiscation or retention of a permit by the delivery site.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.150 Permit revocation or suspension.**

A. The permit of a person shall be revoked or suspended upon a determination by the LBCB, or the LBCB's designee, that any of the following have occurred:

1. The permittee has allowed another person to use the permittee's permit for any purpose;

2. The permittee's permit has been altered, copied or used as the basis for the making of a false or imitation permit;

3. The permittee has been convicted of, pleaded guilty or no contest to any of the violations or is under a court order or on conditions as set out in Section 4.02.120.C.4.(a), (b) or (c) and Section 4.02.120.C.5.;

4. The permittee has failed or refused to pay an amount owing the city for fees, charges or taxes due for alcoholic beverages received by the delivery site addressed to or for the permittee if such amount remains unpaid more than thirty days following the mailing to the permittee of an invoice for the amount owing;

5. The permittee has used the permit of another person for any purpose;

6. The permittee submitted untrue or misleading statements or false, altered or misleading documents in connection with an application for a permit;

7. The permittee is no longer domiciled in Kotzebue; or

8. The permittee has violated any of the provisions of this chapter.

B. Upon receiving notice from the delivery site or a city officer or employee that any of the conditions set out in subsection A. of this section exist, the LBCB or the LBCB's designee shall

immediately notify the permittee of the allegation and that the permit will be suspended or revoked ten days from the date the notice is mailed unless the permittee files an appeal to the LBCB. An appeal to the LBCB shall be processed as provided in Section 4.02.130.

C. Upon a finding that one or more of the conditions set out in Section 4.02.150.A. have occurred, the LBCB shall suspend or revoke the person's permit, as determined to be appropriate under the circumstances by the LBCB, or the LBCB's designee. The order of suspension or revocation shall state the length of time the suspension or revocation shall remain in effect and any additional requirements, including fines, the permittee must meet before a new permit may be issued to a person whose permit has been revoked. A suspended permit shall be retained by the LBCB and returned to the permittee when the period of suspension ends. A revoked permit shall be destroyed by the LBCB after the time for the appeal of the LBCB's decision has expired.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.160 Fees, charges and storage limits.**

The LBCB, with the approval of the city council shall, by LBCB resolution, establish a schedule of fees and charges for receipt, storage, stocking, handling, delivery, processing, transfer to the city package store and any other services or activities performed by the city and the delivery site.

The LBCB shall establish limits on the amount of alcoholic beverages a permittee may have stored at the delivery site at any one time. Amounts in excess of the limits established shall be charged additional fees and surcharges as determined by the LBCB and as approved by the city council and/or transferred to the city's package store for sale to an authorized person.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

#### **4.02.170 Penalties for violations.**

A. Upon a violation of this chapter, the person shall be fined and penalized in accordance

with terms, conditions and penalties as set by regulations duly adopted by the LBCB and approved by the city council.

B. All outstanding conditions, penalties and fines must be satisfied and paid in full before a permit may be renewed or re-issued.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

**4.02.180 Severability.**

If any provision of this chapter shall be declared invalid or void it shall not invalidate or void the other provisions of this chapter. Such invalid or void provisions shall be severed from this chapter and not adversely affect the lawful enforcement of the other provisions.

(Ord. No. 10-04, § 2(Exh. A), 4-1-2010)

# **Kotzebue Municipal Code**

## **Title 4**

### **Chapter 4.03**

**[Alcoholic Beverage Package Store]**

Definitions, of this title, unless the context in which the word or phrase is used clearly indicates a different meaning was intended.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

## Chapter 4.03

### ALCOHOLIC BEVERAGE PACKAGE STORE

#### Sections:

- 4.03.010 Definitions.
- 4.03.020 Establishment.
- 4.03.030 Notice of establishment.
- 4.03.040 Package store operation responsibility.
- 4.03.050 Package store hours of operation.
- 4.03.060 Daily sale limits.
- 4.03.070 Monthly sale limits.
- 4.03.080 Purchase of alcoholic beverages.
- 4.03.090 Permit.
- 4.03.100 Appeals to LBCB.
- 4.03.110 Use and possession of permit.
- 4.03.120 Permit revocation or suspension.
- 4.03.130 Prices, fees and charges.
- 4.03.140 Penalties for violations.
- 4.03.150 Severability.

#### 4.03.010 Definitions.

When used in this chapter, all words and phrases have the meanings set out in Section 4.02.010,

#### 4.03.020 Establishment.

A. There is established the Kotzebue Alcoholic Beverage Package Store, which shall be at such location as the LBCB recommends and the city council approves. The package store should be located in a well-lighted, developed area with reasonable public access and where it may be easily monitored. The proximity to a police or other public safety facility that is manned twenty-four hours a day is encouraged.

B. The package store shall be clean, heated and well-secured against break-in or other unauthorized entry. Inside the package store there shall be an area adequate to securely store alcoholic beverages delivered to the site. The LBCB, after consulting with such advisors, security professionals, law enforcement agencies and other persons shall devise and have installed or constructed such security systems, areas or arrangements as may be appropriate to ensure the security and safekeeping of alcoholic beverages delivered to the city package store.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### 4.03.030 Notice of establishment.

Upon the establishment of an alcohol package store under this chapter, the LBCB shall give notice of the establishment to the ABC board, as required by state law. The notice shall include, at a minimum:

1. The name by which the site is to be known if other than the "Kotzebue Alcoholic Beverage Package Store;" and

2. The address of the site.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### 4.03.040 Package store operation responsibility.

A. As set forth in Section 4.01.150.B. of this title, the LBCB shall, subject to city council review

(Kotzebue Supp. No. 7, 5-14)

and approval, have the power and duty to the maximum extent possible, subject to available funding, and as allowed by local, state and federal law, to establish and operate a package store.

B. The LBCB shall prescribe rules, policies and procedures, as approved by the city council, which are consistent with the provisions of this chapter, as it determines to be appropriate. (Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

**4.03.050 Package store hours of operation.**

A. The LBCB by regulation shall establish a schedule of days and hours of operation for the package store. The schedule shall be posted at each entrance to the package store.

B. The hours of operation of the package store may be the same as the hours of operation of the delivery site established by Chapter 4.02 of the Kotzebue Municipal Code. However, the LBCB may establish different hours of operation for the package store, even if the package store and the delivery site are located in the same facility.

C. Through regulations, the LBCB may authorize additional, unscheduled hours of operation on a temporary basis to accommodate special situations.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

**4.03.060 Daily sale limits.**

The LBCB may, through regulations approved by the city council, set daily limits on the amount of alcoholic beverages an authorized individual may purchase at the package store.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

**4.03.070 Monthly sale limits.**

The LBCB may, through regulations approved by the city council, set monthly limits on the amount of alcoholic beverages an authorized individual may purchase at the package store.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

**4.03.080 Purchase of alcoholic beverages.**

A. The purchase of alcoholic beverages in Kotzebue may occur only at the package store

established by this chapter until such time as a city-owned-and-operated beverage dispensary, licensed bar and/or city-owned-and-operated licensed restaurant is opened and in operation, at which time alcoholic beverages may also be purchased at such city-owned-and-operated facilities. Sales transactions for alcoholic beverages may be made only by an authorized officer or employee of the city.

B. The following persons are not authorized to purchase alcoholic beverages and no sales shall be made to such persons:

1. A person believed to be a drunken person by the package store employee in charge of the package store at the time the request to purchase is made;

2. A person who is unable to provide his/her current, valid permit to the package store employee;

3. A person who is unable to satisfy the package store employee by means of a duly-issued, official identification, with such identification requirements as set by regulations approved by the LBCB, that he/she is the person to whom the permit was issued;

4. A person who fails or refuses to pay all amounts owing the city with respect to the alcoholic beverages;

5. A person who, under A.S. 04.16.200 has been convicted within the preceding two years of a violation of A.S. 04.11.010;

6. For so long as the court order is in effect, a person whom a court has ordered not to consume or possess alcohol if the package store has been so notified by the Kotzebue Police Department;

7. For so long as the condition is in effect, a person who has been released from custody pending trial or who has been released on probation, parole or under similar circumstances, if a condition of the release is that the person not consume or possess alcoholic beverages if the package store has been so notified by the Kotzebue Police Department;

8. A person who is not able to satisfactorily prove that their domicile is the place shown on the permit; or

9. A person who has voluntarily placed himself/herself on a "no sale list" on such terms and conditions as established by duly-adopted LBCB regulations.

C. An authorized package store employee may not sell alcoholic beverages to a person who is not authorized to purchase alcoholic beverages.

D. A person who is not authorized to purchase alcoholic beverages may not buy them at the package store or elsewhere.

E. Before the package store employee may refuse to sell alcohol to a person for reasons set out in subsections B.5., 6. or 7., above, the package store must be in possession of a copy of the court order or judgment or either a copy of the conditioned release or written confirmation of the conditioned release and the terms of the conditions relating to alcohol consumption, or a confirmation by the court, the chief of police or the LBCB of the criminal judgment. The burden of showing that the order, condition of release or condition of probation or parole, above, is no longer in effect is upon the person to whom the order or condition or criminal judgment applied.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### 4.03.090 Permit.

A. Upon receipt of a complete application and a nonrefundable application fee in an amount set by the LBCB, the city employee designated by the LBCB shall issue an alcoholic beverage package store permit to a person who meets the qualifications set out in this section. Permit applications must contain the mailing address and phone number of applicant. The application shall contain the applicant's driver's license number, voter registration number and such other information as the LBCB may establish in regulations and/or the city employee designated by the LBCB may require as proof of domicile in Kotzebue and for identification purposes. Permits shall be numbered sequentially and shall be valid for a period

of one year. Permits are the property of the city of Kotzebue and may be revoked, suspended and/or surrendered to the city as provided by law, ordinance, statute and regulation. If a permit is lost by the permittee or must be replaced for any reason, a nonrefundable replacement fee in an amount set by the LBCB shall be paid by the permittee.

B. A permit may be renewed by a person who continues to meet the qualifications for a permit upon the filing of a renewal application accompanied by a nonrefundable renewal fee in an amount set by the LBCB and proof of the applicant's qualification for renewal. A lost, stolen or destroyed permit may be replaced under this renewal procedure.

C. To qualify for a permit, a person must:

1. Be at least twenty-one years of age;
2. Be domiciled within the city limits of the city of Kotzebue with proof of domicile as required in regulations established by the LBCB or have a permit as set forth in Section 4.03.090.G., below;
3. Not have any amounts owing to the city of Kotzebue for delivery site handling, storage, other delivery site charges, sales/use taxes on alcoholic beverages;
4. Within two years of the date of the application not have been convicted of, pleaded guilty or no contest to a violation of:
  - (a) Any provision of Title 4 of the Alaska Statutes;
  - (b) AS 28.33.030, 28.35.030 or 28.35.032; or
  - (c) Any provision of federal law regulating the manufacture, possession, transportation, sale or use of alcoholic beverages or any provision of the Kotzebue Municipal Code involving the importation, sale, delivery, possession or use of alcohol.
5. Not be subject to a court order or conditions as set out above in Section 4.03.080.B.6. and B.7.; and
6. Not be a person who has been issued a permit under this chapter whose permit has been suspended or revoked unless the period of the

revocation or suspension has expired and any fines paid in full and all conditions imposed have been met.

D. Upon receipt of a completed application and the required fee, the designated city employee shall undertake such investigation as may be necessary to verify statements and claims made in the application and separately provided proofs submitted by the applicant. If the designated city employee determines the applicant is qualified for a new permit or a renewal of an existing permit, the designated city employee shall issue the permit and provide a copy of the permit and application to the alcohol package store. Permits may be delivered by the designated city employee only to the applicant in person and to no other person except to the qualified, designated agent of a physically disabled person who has been issued a disabled person's permit pursuant to Section 4.03.110.E., below.

E. If the designated city employee determines that an applicant is not qualified or that an essential claim, statement or proof is doubtful and unsupported by adequate, reliable evidence or other defect, the applicant shall have fourteen calendar days from the date the designated city employee mails the notice within which to submit documentation or other proof to overcome the deficiencies set out in the notice prepared by the designated city employee. If the designated city employee is satisfied that the person is qualified for a permit, the designated city employee shall issue the permit as provided in subsection D. of this section. If the designated city employee determines, based on the submissions by the applicant and the results of the investigation by the designated city employee that the applicant has not satisfactorily shown that the applicant is qualified for a permit, the designated city employee shall deny the permit and shall notify the applicant in writing of the denial and of the reasons for the denial. The denial of the permit may be appealed to the LBCB who shall hear the appeal on the record established by the designated city employee. The notice of denial from the designated city employee shall contain a statement

advising the applicant of the right to appeal the denial to the LBCB by filing a written notice of appeal to the LBCB within thirty days of the date the notice of denial is mailed by the designated city employee.

F. A person may not provide or make untrue or misleading statements or provide false, altered or misleading documents in connection with an application for a permit under this chapter.

G. Notwithstanding Section 4.03.090.C.2., above, the LBCB may, through duly adopted regulations as approved by the city council, establish a permit process for visitors, transients, temporary residents and/or seasonal workers who are not permanently domiciled in Kotzebue. (Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### **4.03.100 Appeals to LBCB.**

A. In an appeal by a permit applicant from a decision of the designated city employee, the LBCB shall hear the appeal on the record made by the designated city employee. New evidence that could have been provided to the designated city employee during the application process may not be submitted as a part of the appeal to the LBCB. After receiving written arguments or oral argument, if permitted by the LBCB, from the applicant and the designated city employee, the LBCB shall determine whether, upon the record before the designated city employee at the time the appealed decision was made, there was substantial evidence to support the decision of the designated city employee.

B. In an appeal from a decision of the package store to refuse to sell, confiscate a permit, or to take or refuse to take other action, the aggrieved person shall file a written notice of appeal with the package store within seven calendar days of the delivery or mailing of the decision unless a longer period of time is permitted under this chapter. The package store shall immediately forward the notice of appeal to the LBCB.

C. In all appeals, the LBCB shall provide notice to the appellant whether oral arguments and testimony will be permitted and the date:

1. Upon which oral arguments and oral testimony will be heard, if permitted;

2. By which additional documents, if permitted, must be received; and

3. By which written arguments must be received.

The LBCB shall inform the appellant where the record on appeal may be reviewed and shall provide a copy to the appellant upon request and payment of any copying charges that apply.

D. The LBCB shall schedule the receipt of argument, testimony and documents to ensure that the appellant has reasonable time to prepare and make submission to the LBCB. The first request by the appellant to extend a submission date or to reschedule an oral argument or testimony date shall be freely granted unless doing so would create a hardship for the designated city employee or the package store. Any additional extensions for appellant must be fully justified.

E. The LBCB may retain a hearing officer, who may be the city attorney or other appropriate city employee, to hear an appeal under this chapter. The hearing officer shall make scheduling and other procedural decisions and, after receipt of the written argument by the appellant and the designated city employee or package store, shall prepare a proposed decision for the LBCB. The proposed decision by the LBCB or the hearing officer shall set out the evidence in the record upon which the decision is based, a conclusion and an appropriate order. If the LBCB does assign a hearing officer to hear an appeal, the LBCB may accept and sign the proposed decision of the hearing officer, redraft or modify it before signing it or refer it back to the hearing officer for further specified action. Upon signing of the decision, it becomes the LBCB's decision.

F. If the LBCB hears and decides the appeal, it shall prepare a written decision setting out the evidence relied upon, conclusions and an appropriate order.

G. The LBCB's decision may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure applicable to administrative decisions. The LBCB's decision shall con-

tain such notice of the right of appeal as may be required by the Alaska Rules of Appellate Procedure.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### **4.03.110 Use and possession of permit.**

A. A permittee may not authorize, permit or acquiesce in the use or possession, for any purpose, by another person of the permit issued to the permittee.

B. A permittee may not fail to prevent another person from possessing or using the city-issued permit of the permittee. It shall be a defense to a violation of this subsection if the permittee, upon discovery the loss of the permit or that the permit is in the possession of another person, immediately notified the city package store and the Kotzebue Police Department of the loss of the permit and the name of the person possessing the permit, if known.

C. A person other than the permittee may not possess or use or attempt to possess or use for any purpose, a permit issued under this chapter to another person.

D. The package store employee shall retain any permit displayed by a person who is not the permittee to whom the permit was issued.

E. Subsections A., B., C. and D. of this section do not apply when the permittee is a disabled person who has met the terms and conditions set by the LBCB for a disabled person's permit and who has been issued a disabled person's permit and the permit is in the possession of the person designated on the permit as the permittee's qualified agent and the disabled person's qualified agent also has a valid permit under this chapter.

F. A person may not alter in any way a permit issued under this chapter.

G. A person may not make, by any means, an imitation or copy of a permit issued or authorized to be issued, under this chapter.

H. A person may not use or attempt to use for identification or any similar purpose a permit

that has been altered or that is an imitation or copy of a permit issued or authorized to be issued, under this chapter.

I. A package store employee shall confiscate and retain any altered, copy or imitation permit displayed by the holder.

J. A package store employee, upon receiving the permit, shall confiscate and retain the permit of a person whose permit has been revoked or suspended.

K. The LBCB shall be promptly notified of the confiscation or retention of a permit by the package store.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### **4.03.120 Permit revocation or suspension.**

A. The permit of a person shall be revoked or suspended upon a determination by the LBCB, or the LBCB's designee, that any of the following have occurred:

1. The permittee has allowed another person to use the permittee's permit for any purpose;

2. The permittee's permit has been altered, copied or used as the basis for the making of a false or imitation permit;

3. The permittee has been convicted of, pleaded guilty or no contest to any of the violations or is under a court order or on conditions as set out in Section 4.03.090.C.4.(a), (b) or (c) and Section 4.03.090.C.5.;

4. The permittee has used the permit of another person for any purpose;

5. The permittee submitted untrue or misleading statements or false, altered or misleading documents in connection with an application for a permit;

6. The permittee is no longer domiciled in Kotzebue; or

7. The permittee has violated any of the provisions of this chapter.

B. Upon receiving notice from the package store or a city officer or employee that any of the conditions set out in subsection A. of this section exist, the LBCB or the LBCB's designee shall immediately notify the permittee of the allegation

and that the permit will be suspended or revoked ten days from the date the notice is mailed unless the permittee files an appeal to the LBCB. An appeal to the LBCB shall be processed as provided in Section 4.03.100.

C. Upon a finding that one or more of the conditions set out in Section 4.03.120.A. have occurred, the LBCB shall suspend or revoke the person's permit, as determined to be appropriate under the circumstances by the LBCB, or the LBCB's designee. The order of suspension or revocation shall state the length of time the suspension or revocation shall remain in effect and any additional requirements, including fines, the permittee must meet before a new permit may be issued to a person whose permit has been revoked. A suspended permit shall be retained by the LBCB and returned to the permittee when the period of suspension ends. A revoked permit shall be destroyed by the LBCB after the time for the appeal of the LBCB's decision has expired.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

#### **4.03.130 Prices, fees and charges.**

The LBCB shall set prices or establish a mechanism for setting prices for all items sold in the package store, as well as all fees and charges for the operation of the package store. The city administration shall report, quarterly, to the city council on prices set by the city administration for the past quarter and prices anticipated for the upcoming quarter.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010; Ord. No. 12-05, § 4(Exh. C), 5-17-2012)

#### **4.03.140 Penalties for violations.**

A. Upon a violation of this chapter, the person shall be fined and penalized in accordance with terms, conditions and penalties as set by regulations duly adopted by the LBCB and approved by the city council.

B. All outstanding conditions, penalties and fines must be satisfied and paid in full before a permit may be renewed or re-issued.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

**4.03.150 Severability.**

If any provision of this chapter shall be declared invalid or void it shall not invalidate or void the other provisions of this chapter. Such invalid or void provisions shall be severed from this chapter and not adversely affect the lawful enforcement of the other provisions.

(Ord. No. 10-04, § 3(Exh. B), 4-1-2010)

# **Kotzebue Municipal Code**

## **Title 4**

### **Chapter 4.04**

**[Alcoholic Beverage Dispensary]**

## Chapter 4.04

### ALCOHOLIC BEVERAGE DISPENSARY

#### Sections:

- 4.04.010 Definitions.**
- 4.04.020 Establishment.**
- 4.04.030 Notice of establishment.**
- 4.04.040 Alcoholic beverage dispensary operation responsibility.**
- 4.04.050 Alcoholic beverage dispensary hours of operation.**
- 4.04.060 Prices.**
- 4.04.070 Penalties for violations.**
- 4.04.080 Severability.**

#### **4.04.010 Definitions.**

When used in this chapter, all words and phrases have the meanings set out in Section 4.02.010, Definitions, of this title, unless the context in which the word or phrase is used clearly indicates a different meaning was intended.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

#### **4.04.020 Establishment.**

A. There is established the Kotzebue Alcoholic Beverage Dispensary, which shall be at such location as the LBCB recommends and the city council approves.

B. No alcoholic beverages for consumption by the drink may be sold at retail locations anywhere within the city of Kotzebue except at the city-owned alcoholic beverage dispensary or city-owned restaurant or eating place established by Chapter 4.05 of this title.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

#### **4.04.030 Notice of establishment.**

Upon the establishment of the alcoholic beverage dispensary under this chapter, the LBCB shall give notice of the establishment to the ABC board, as required by state law.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

#### **4.04.040 Alcoholic beverage dispensary operation responsibility.**

A. As set forth in Section 4.01.150.B. of this title, the LBCB shall, subject to city council review and approval, have the power and duty to the maximum extent possible, subject to available funding, and as allowed by local, state and federal law, to establish and operate an alcoholic beverage dispensary.

B. The LBCB shall prescribe rules, policies and procedures, as approved by the city council, which are consistent with the provisions of this chapter, as it determines to be appropriate.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

#### **4.04.050 Alcoholic beverage dispensary hours of operation.**

A. As set forth in Section 4.01.150.B. of this title, the LBCB, by regulation, shall establish a schedule of days and hours of operation for the alcoholic beverage dispensary as permitted by A.S. 04.16.010 and A.S. 04.21.010.

B. Through regulations, the LBCB may authorize additional, unscheduled hours of operation on a temporary basis to accommodate special situations, so long as those unscheduled hours of operation are consistent with A.S. 04.16.010, A.S. 04.16.070 and any local hours of operation established under A.S. 04.21.010.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

#### **4.04.060 Prices.**

The LBCB, with the approval of the city council, shall set prices or establish a mechanism for setting prices for all items sold in the alcoholic beverage dispensary.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

**4.04.070 Penalties for violations.**

Upon a violation of this chapter or the regulations adopted pursuant to this chapter, the person shall be fined and penalized in accordance with terms, conditions and penalties as set by regulations duly adopted by the LBCB and approved by the city council.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

**4.04.080 Severability.**

If any provision of this chapter shall be declared invalid or void it shall not invalidate or void the other provisions of this chapter. Such invalid or void provisions shall be severed from this chapter and not adversely affect the lawful enforcement of the other provisions.

(Ord. No. 12-01, § 2(Exh. A), 8-18-2011)

# **Kotzebue Municipal Code**

## **Title 4**

### **Chapter 4.05**

**[Alcoholic Restaurant or Eating Place]**

**Chapter 4.05**

**ALCOHOLIC RESTAURANT OR EATING PLACE**

**Sections:**

- 4.05.010 Definitions.**
- 4.05.020 Establishment.**
- 4.05.030 Notice of establishment.**
- 4.05.040 Alcoholic restaurant or eating place operation responsibility.**
- 4.05.050 Alcoholic restaurant or eating place hours of operation.**
- 4.05.060 Prices.**
- 4.05.070 Penalties for violations.**
- 4.05.080 Severability.**

**4.05.010 Definitions.**

When used in this chapter, all words and phrases have the meanings set out in Section 4.02.010, Definitions, of this title, unless the context in which the word or phrase is used clearly indicates a different meaning was intended.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.020 Establishment.**

A. There is established the Kotzebue Alcoholic Restaurant or Eating Place, which shall be at such location as the LBCB recommends and the city council approves.

B. No alcoholic beverages for consumption by the drink may be sold at retail locations anywhere within the city of Kotzebue except at the city-owned restaurant or eating place or at the city-owned alcoholic beverage dispensary established by Chapter 4.04 of this title.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.030 Notice of establishment.**

Upon the establishment of the alcoholic restaurant or eating place under this chapter, the LBCB shall give notice of the establishment to the ABC board, as required by state law.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.040 Alcoholic restaurant or eating place operation responsibility.**

A. As set forth in Section 4.01.150.B. of this title, the LBCB shall, subject to city council review and approval, have the power and duty to the maximum extent possible, subject to available funding, and as allowed by local, state and federal law, to establish and operate an alcoholic restaurant or eating place.

B. The LBCB shall prescribe rules, policies and procedures, as approved by the city council, which are consistent with the provisions of this chapter, as it determines to be appropriate.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.050 Alcoholic restaurant or eating place hours of operation.**

A. As set forth in Section 4.01.150.B. of this title, the LBCB, by regulation, shall establish a schedule of days and hours of operation for the alcoholic restaurant or eating place as permitted by A.S. 04.16.010 and A.S. 04.21.010.

B. Through regulations, the LBCB may authorize additional, unscheduled hours of operation on a temporary basis to accommodate special

situations, so long as those unscheduled hours of operation are consistent with A.S. 04.16.010, A.S. 04.16.070 and any local hours of operation established under A.S. 04.21.010.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.060 Prices.**

The LBCB, with the approval of the city council, shall set prices or establish a mechanism for setting prices for all items sold in the restaurant or eating place.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.070 Penalties for violations.**

Upon a violation of this chapter or the regulations adopted pursuant to this chapter, the person shall be fined and penalized in accordance with terms, conditions and penalties as set by regulations duly adopted by the LBCB and approved by the city council.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

**4.05.080 Severability.**

If any provision of this chapter shall be declared invalid or void it shall not invalidate or void the other provisions of this chapter. Such invalid or void provisions shall be severed from this chapter and not adversely affect the lawful enforcement of the other provisions.

(Ord. No. 12-01, § 3(Exh. B), 8-18-2011)

# **Kotzebue Municipal Code**

## **Title 4**

### **Chapter 4.06**

**[Prohibition of Public Intoxication]**

**4.06.010 Intent and purpose.**

This section is intended to provide for the safety, welfare and health of the public. Being publicly intoxicated makes a person vulnerable to injury, robbery, assault, and a number of other dangers. This section addresses the behavior of the individual, rather than his or her blood alcohol content level, thus encouraging responsible behavior while consuming alcohol. This provides benefit to the individual and the public.

(Ord. No. 13-03(Amd.), § 2(Exh. A), 11-1-2012)

**4.06.020 Definitions.**

1. "Incapacitated person" means a person who, as the result of the use of alcohol, drugs or another controlled substance, is unconscious or whose judgment is so impaired that he or she is incapable of making rational decisions, as evidenced objectively by indicators such as extreme physical debilitation, physical harm or threats of harm to himself/herself or to any other person or to property.

2. "Intoxicated person" means a person whose mental or physical functioning is impaired as a result of the use of alcohol, drugs or another controlled substance. Evidence of an intoxicated person shall include a combination of the following indicators:

- (a) Odor of intoxicants on the breath;
- (b) Bloodshot eyes;
- (c) Dilated pupils;
- (d) Stumbling or staggering;
- (e) Slurred speech; and/or
- (f) Failure of Standard Field Sobriety Test.

3. "Public nuisance" means conduct by an individual that is:

- (a) A disturbance of the peace, including, but not limited to, endangering one's self or other persons or property;
- (b) Acting in an unruly or combative manner;
- (c) Creating loud noises to the disturbance of other persons;
- (d) Refusing to follow the instructions of a police officer;

**Chapter 4.06****PROHIBITION OF PUBLIC  
INTOXICATION****Sections:**

- 4.06.010 Intent and purpose.**
- 4.06.020 Definitions.**
- 4.06.030 Intoxication in public places prohibited.**
- 4.06.040 Penalty.**
- 4.06.050 Appeal rights.**

(e) Refusing to follow instructions to leave a residence or place of business by the owner, employee or other person in charge thereof; and/or

(f) Otherwise disturbing the peace in any public place.

4. "Public place" means a place to which the public has access and includes, but is not limited to places owned or controlled by the city, borough or state; any public street, highway, sidewalk, parking lot, alley, parks, schools, places of worship and places of business. Places of business include premises open to the public where alcohol is consumed, including a licensed alcohol establishment, as provided pursuant to Chapter 4.04, Alcoholic Beverage Dispensary, and Chapter 4.05, Alcoholic Restaurant or Eating Place.

(Ord. No. 13-03(Amd.), § 2(Exh. A), 11-1-2012)

**4.06.030 Intoxication in public places prohibited.**

No person in a public place shall conduct himself or herself in such a manner as to become an intoxicated or incapacitated person and to create a public nuisance.

(Ord. No. 13-03(Amd.), § 2(Exh. A), 11-1-2012)

**4.06.040 Penalty.**

A. Persons found in violation for the first time shall be provided a one-time, written warning with conditions in lieu of a citation. The warning shall be conditioned on such person attending and successfully completing an alcohol education program approved by the city. All costs and expenses for such alcohol education program shall be paid by the person committing the violation. Failure to timely complete the city-approved, alcohol education program shall result in the issuance of a citation. Successful and timely completion of the alcohol education program shall result in no further enforcement of the violation giving rise to the warning. Successful and timely completion shall be done within ninety days of the warning.

B. Any person violating the provisions of this section shall pay a fine of one hundred fifty dollars for the first offense. A second violation will be

assessed a fine of three hundred dollars and result in suspension of the person's permit, if any, issued pursuant to Chapter 4.02 and/or Chapter 4.03 for a period of six months and payment of a two hundred dollar administrative fee before a permit is reissued. A third violation will be assessed a fine of five hundred dollars and result in a five-year revocation of the person's permit, if any, issued pursuant to Chapter 4.02 and/or Chapter 4.03 and payment of a three hundred dollar administrative fee before a new permit is issued. These fines and administrative fees are separate and apart from any fines and fees set out in Chapter 4.02 and/or Chapter 4.03 and the regulations adopted pursuant thereto.

(Ord. No. 13-03(Amd.), § 2(Exh. A), 11-1-2012)

**4.06.050 Appeal rights.**

A person determined liable for fines and/or permit suspension and/or revocation under this chapter may, within thirty days of receipt of a notice of imposition of fines, apply for a hearing on the determination. The application shall be in writing and filed with the chief of police. The hearing shall be held within fifteen days of receipt of a timely application before the chief of police or his designee. The hearing shall be limited to the issue of whether the person is liable for the fines and administrative fees imposed under this chapter and/or the permit suspension and/or revocation. Within thirty days of the written decision of the chief of police, a person aggrieved by the decision may appeal to the Superior Court of the Second Judicial District, in Kotzebue, in accordance with the Alaska Rules of Appellate Procedure.

(Ord. No. 13-03(Amd.), § 2(Exh. A), 11-1-2012)

**LBCB  
Regulations  
for  
KMC Chapters  
4.02 and 4.03**

**Designated Receiving Sites.**

Authority: KMC § 4.02.020.

Common carriers who want to be "designated receiving sites" for alcohol imported into Kotzebue for delivery to the Kotzebue Alcoholic Beverage Delivery Site ("Delivery Site") must have facilities and procedures, including specific security requirements, in place which contain:

- (a) a summary of how alcoholic beverages shipped as freight will be received, processed and delivered to the Delivery Site;
- (b) a summary of how alcoholic beverages checked as baggage will be received, processed and delivered to the Delivery Site; and,
- (c) a summary of how undelivered freight and unclaimed baggage are handled.

**Advisements, Postings and Materials at Designated Receiving Sites.**

Authority: KMC § 4.02.020.

The LBCB shall develop appropriate advisements, postings and materials for distribution and posting at designated receiving sites regarding local option rules and regulations.

**Delivery Site/Package Store Hours of Operation.**

Authority: KMC §§ 4.02.050 and 4.03.050.

The Delivery Site shall be open for the receipt of alcoholic beverages from common carriers at times and on days as established by the Delivery Site/Package Store Manager and approved by the LBCB, after consultation with the common carriers serving Kotzebue.

The Delivery Site shall be open for the delivery of alcoholic beverages to a Permittee on a schedule established by the Delivery Site/Package Store Manager and approved by the LBCB.

The Package Store shall be open for the purchase of alcoholic beverages to a Permittee on a schedule established by the Delivery Site/Package Store Manager and approved by the LBCB.

**Employees at Delivery Site/Package Store.**

Authority: KMC Chapters 4.01, 4.02 and 4.03.

Applicants for employment at the Delivery Site/Package Store shall obtain a criminal background check as part of the application process. Applicants refusing to do so shall not be eligible for employment at the Delivery Site/Package Store. The fee for the criminal background check shall be reimbursed to Applicants who are subsequently hired to work at the Delivery Site/Package Store. Employees at the Delivery Site/Package Store may be subject to random drug and alcohol testing pursuant to a City Drug and Alcohol Testing Program adopted under A.S. 23.10.600 - A.S. 23.10.699.

**Daily Sale Limits at Package Store.**

Authority: KMC § 4.03.060.

**Distilled Spirits:** An authorized individual Permittee may purchase no more than 750 ml of distilled spirits in any one business day at the Package Store. See, Table A, below.

**Beer:** An authorized individual Permittee may purchase no more than 2.8125 gallons (30 12-ounce cans) of beer in any one business day at the Package Store. See, Table A, below.

**Wine:** An authorized individual Permittee may purchase no more than three (3) liters of wine in any one business day at the Package Store. See, Table A, below.

Liqueurs: An authorized individual Permittee may purchase no more than One and one half (1.5) liters of liqueurs in any one business day at the Package Store. See, Table A, below. Liqueurs (also known as "cordials") are sweet, distilled spirits with sugar contents starting at 2.5%, with the sweetest (i.e., crèmes) having much more sugar content. Distinct classes of liqueurs include absinthe, amaretto, curacao, Irish cream and triple sec. Proprietary liqueurs include such as centuries-old blends as Avena, Benedictine, Chartreuse and Frangelico. (The listing of types and brands is not meant to be inclusive or exclusive but is for the purpose of defining "liqueurs" in these regulations.) Liqueurs may not exceed 25 percent alcohol by volume.

**Delivery Site Use.**

Authority: KMC §§ 4.02.010(0), 4.02.070(B) and (C), 4.02.090(B) and (C), 4.02.100(B)(2), (C), (D) and (H).

Prior to ordering alcoholic beverages for delivery to the Kotzebue Alcoholic Beverage Delivery Site, a person must have a valid Permit issued pursuant to KMC §4.02.120. Any alcohol ordered prior to the issuance of a valid Permit shall be deemed illegally shipped to the Delivery Site and shall be deemed forfeited to the City of Kotzebue and shall be dealt with pursuant to KMC §4.02.110. Any person responsible for illegally shipping alcohol into the City of Kotzebue shall be subject to the penalties set out in Table "B," herein, in addition to any applicable criminal charges.

**Delivery Site Limits.**

Authority: KMC § 4.02.060.

The written-order importation limits, per calendar month, that an authorized, individual Permittee may order and pick up through the Delivery Site shall be those limits established by state law for beer and wine in Alaska Statute 04.11.150(g), provided, however, that the limit, per calendar month, that an authorized, individual Permittee may order and pick up through the Delivery Site for distilled spirits shall be no more than 4.5 liters of distilled spirits in any one calendar month through the Delivery Site. See, Table A, below.

**Alcohol Imported to Kotzebue as Checked Baggage.**

Authority: KMC §§ 4.02.070 and 4.02.120.

A person importing alcoholic beverages into the City in a single day or single shipment is limited to the following:

- 1 liter of distilled spirits and/or liqueurs
- 2 liters of wine
- 1 gallon of malt beverage

A person importing alcoholic beverages into the City in excess of any of the quantities listed above must be domiciled in Kotzebue and must have a Permit as required by KMC §4.02.120 before importing alcoholic beverages as checked baggage. Alcoholic beverages exceeding the quantities set out above shall be checked separately in packaging that is clearly marked as "ALCOHOLIC BEVERAGES" in lettering that is at least two (2) inches high and drawn in lines that are one-quarter inch wide. Such packages shall contain only, alcoholic beverage items and shall be clearly addressed as follows:

Name of Purchaser/Permittee

c/o KOTZEBUE ALCOHOLIC  
BEVERAGE DELIVERY SITE

The Permittee shall not take delivery of the alcoholic beverages so shipped at the Airport or other designated receiving site. Instead, the alcoholic beverages so shipped shall be delivered to the City's Delivery Site for pick-up by the Permittee and payment of the Delivery Site Pick-Up Fee and applicable City alcohol sales/use tax, which shall be calculated based upon the receipt for the purchase of said

alcoholic beverages, which shall be affixed to the outside of the packaging. (If the packaging does not have a receipt for the purchase of the imported alcoholic beverages affixed to the outside of the packaging, said beverages shall be taxed at the local retail price for the product or a comparable product at the City's Package Store.) Any alcoholic beverages imported into the City as checked baggage that exceed 1 liter of distilled spirits, or 2 liters of wine, or 1 gallon of malt beverage in a single day or a single shipment as checked baggage that does not comply with the above-stated requirements shall be deemed illegally imported into the City and shall be forfeited to the City of Kotzebue and shall be dealt with pursuant to KMC §4.02.110. Any person responsible for illegally shipping alcohol into the City of Kotzebue shall be subject to the penalties set out in Table "B," herein, in addition to any applicable criminal charges.

#### **Pre-Paid Keg Orders Through Package Store.**

Authority: KMC §§ 4.03.060 and 4.03.070.

One full-size keg of beer (approximately 15.5 - 16 gallons) may be special-ordered on a fully pre-paid basis through the Package Store per calendar month, per individual Permittee. For purposes of this provision, a keg is defined as one-half ( $\frac{1}{2}$ ) barrel keg, which is commonly known as a "full-size" keg and contains 15.5 to 16 gallons of beer, which produces approximately 165 to 170 12-ounce servings. In addition, pony kegs or one-sixth ( $\frac{1}{6}$ ) barrel kegs may be special-ordered on a fully pre-paid basis through the Package Store. A one-quarter ( $\frac{1}{4}$ ) barrel keg, which is commonly known as a "half keg" or "pony keg" contains eight (8) gallons of beer, which produces approximately 85 12-ounce servings. A one-sixth ( $\frac{1}{6}$ ) barrel keg contains five (5) gallons of beer, which produces approximately 53 12-ounce servings. Up to two (2) half kegs/pony kegs or three (3) one-sixth ( $\frac{1}{6}$ ) barrel kegs may be special-ordered on a fully pre-paid basis through the Package Store per calendar month, per individual Permittee. Kegs may not be ordered by written order for delivery to the Delivery Site, regardless of keg size.

The monthly keg purchases set out above are exceptions to the Daily Sale Limits set forth in Table A. However, an individual Permittee picking up a pre-paid keg at the Package Store on any given business day may not purchase other beer products on that same business day.

#### **Proof Limit.**

Authority: KMC § 4.02.060(B).

Distilled spirits sold at the Package Store shall contain no more than 50 percent alcohol by volume.

#### **Damaged Alcoholic Products.**

Authority: KMC § 4.01.150(Q).

Damaged alcoholic beverages that cannot be delivered through the Delivery Site or sold at the Package Store shall be segregated from undamaged products and inventoried as "Damaged Products" and destroyed periodically under the direct supervision of the Kotzebue Police Department.

#### **Delivery Site/Package Store Records.**

Authority: KMC § 4.02.080(D).

Package Store/Delivery Site Applications/Permits: Applications for permits to purchase alcohol at the Package Store and receive alcohol through the Delivery Site contain, inter alia, the applicant's name, mailing address, phone numbers, date of birth, social security number and disclosures regarding criminal records. As such, these records contain information that applicants may reasonably expect to be kept private and confidential. Therefore, these applications and any attachments thereto are deemed private and confidential and shall not be produced in whole or in part. However, the fact that an applicant was issued a permit is not deemed private and confidential and a proper inquiry regarding the issuance of a permit shall be handled procedurally as set out in the paragraph below.

Amount of Alcohol Purchased: Delivery Site and Package Store records created or maintained by the Delivery Site and Package Store for the purpose of monitoring the amount of alcoholic beverages

received by an individual Permittee are strictly confidential and are not deemed to be public records except for use by law enforcement and other governmental agencies, as authorized by law, in matters involving violations of applicable local, state and federal law governing alcoholic beverages and the use, consumption and/or possession of alcoholic beverages. Any request for these records by anyone other than a duly-authorized law enforcement agency shall be directed to the LBCB and shall be accompanied by a duly-issued subpoena from a Court of competent jurisdiction specifically requesting production of the records. The LBCB shall consult with the City Attorney before responding to any such records requests from anyone other than a duly-authorized law enforcement agency.

**Records Request Forms:** In addition to any subpoena that may be required from a non-law enforcement agency, as set forth above, anyone requesting LBCB records shall complete the appropriate LBCB Records Request Form(s).

**Records Policies:** The LBCB may adopt more specific policies to implement these store records regulations. If such policies are adopted, a copy shall be provided to Parties requesting Delivery Site/Package Store Records.

#### **Identification Requirements.**

Authority: KMC §§ 4.02.100(B)(3), 4.02.120, 4.03.080(B)(3) and 4.03.090.

In addition to the Permit issued by the City of Kotzebue each person must, also, present duly-issued, photo identification for purposes of picking up alcohol at the Delivery Site or purchasing alcoholic beverages at the Package Store. Acceptable duly-issued photo identification must be one of the following: (1) a current Alaska Driver's License; (2) valid, state-issued, Alaska Identification card; (3) U.S. Passport; or, (4) other duly-issued, government identification.

#### **Voluntary "No Delivery List"/"No Sale List."**

Authority: KMC §§ 4.02.100(B)(10) and 4.03.080(B)(9).

A resident of Kotzebue may place himself/herself on a voluntary "no delivery list" and/or "no sale list" for a minimum period of thirty (30) days. During this 30-day period, the "no delivery" and/or "no sale" request may not be rescinded or revoked by the individual and the individual's Permit shall be suspended during the voluntary, 30-day "no delivery/no sale" period. Any Delivery Site alcoholic beverages received for the individual during the voluntary, 30-day, "no delivery" period shall be forfeited pursuant to KMC §4.02.110. After the 30-day, minimum period, the resident may rescind or revoke his/her voluntary "no delivery" and/or "no sale" decision.

#### **Violations of A.S. 04.11.010.**

Authority: KMC §§ 4.02.100(B)(6) and 4.03.080(B)(5).

The State of Alaska database for convictions under A.S. 04.11.010 shall be accessed and updated monthly, as allowed by Alaska law and regulations, by the designated City employee. New convictions shall be promptly entered into the Delivery Site/Package Store database and expired convictions shall be removed.

#### **Court Orders/Conditions of Release.**

Authority: KMC §§ 4.02.100(B)(7), (B)(8), 4.02.150 and 4.03.080(B)(6), (B)(7) and 4.03.120.

Court Orders requiring an individual to avoid consuming or possessing alcohol or conditions of release from custody, pending or while on probation or parole, that restrict an individual from consuming or possessing alcohol shall be entered into the Delivery Site/Package Store database by the designated City employee once such information is received from the Kotzebue Police Department. Every effort shall be made to accurately enter the data of such Court Orders and/or Conditions. Once the Court Order and/or Condition of Release is entered into the City's database, the restricted individual's Permit shall be revoked and no sale or delivery of alcohol may be made to such individual until a new Permit is obtained. However, the burden of showing that a Court Order and/or Condition is no longer in effect is upon the

individual to whom the Order/Condition or criminal judgment applies. Failure on the part of the City to correctly enter the data shall not make the City liable for enforcement of any applicable Court Orders and/or Conditions of release.

**Proof of Domicile.**

Authority: KMC §§ 4.02.120(A) and (C)(2) and 4.03.090(A) and (C)(2).

A person may have multiple residences, but only one domicile. Physical presence, alone, does not establish domicile. A person retains a domicile until it is abandoned. The City relies upon documents and circumstances such as, but not limited to, the following to determine if a person's domicile is in Kotzebue:

- (1) duration of physical presence in Kotzebue;
- (2) voter registration;
- (3) address on driver's license;
- (4) address on motor vehicle registration;
- (5) real property ownership in Kotzebue;
- (6) residential rental lease with name of tenant and landlord and contract information;
- (7) income tax returns;
- (8) current utility bills;
- (9) automobile insurance (showing where vehicle is garaged);
- (10) cellular telephone bill;
- (11) credit card statement; and/or
- (12) United States Postal Service confirmation of address change request.

Proof of domicile is determined on a case-by-case basis and the quality and quantum of proof of domicile may vary from case-to-case, but domicile in Kotzebue means that a person has established a permanent residence in Kotzebue and that Kotzebue is the place to which that person intends to return after any absence.

**Non-Resident Package Store Permits.**

Authority: KMC § 4.03.090(G).

Persons who are not domiciled in Kotzebue may purchase alcoholic beverages at the Package Store on such terms and conditions as established by the LCB and approved by the City Council. The daily limits for purchases at the Package Store shall apply to Non-Residents. Violations of KMC Chapter 4.03 by Non-Resident Permittee holders shall be handled as set forth in Table B, below.

**Disabled Person's Permit.**

Authority: KMC §§ 4.02.140(E) and 4.03.110(E).

A person who is domiciled in Kotzebue and is one hundred percent disabled by virtue of the disability standards of the Social Security Act of the United States may apply for a disabled person's permit by submitting proof of one hundred percent disability from the Social Security Administration and proof from a physician that the disabled person is physically unable to leave his or her home or dwelling to come to the Delivery Site/Package Store. The disabled Permittee may designate one (1) qualified agent to pick up and/or purchase the disabled Permittee's alcoholic beverages from the Delivery Site and/or Package Store provided the disabled person's qualified agent has a valid Permit under Chapters 4.02 and 4.03 of the Kotzebue Municipal Code.

**Fees, Charges and Storage Limits for Delivery Site.**

Authority: KMC § 4.02.160.

The following fees, charges and storage limits are set for use of the Delivery Site:

\$50 Non-refundable Permit Application Fee (Delivery Site/Package Store)

\$25 Non-refundable Annual Renewal Fee for Permit (Delivery Site/Package Store)

\$25 Non-refundable Lost Permit Replacement Fee (Delivery Site/Package Store)

\$25 Delivery Site Pick-up Fee

\$20 Daily Delivery Site Storage Fee (after expiration of minimum permitted delivery time)

### **Marking of Alcoholic Beverages.**

Authority: KMC Chapters 4.01, 4.02 and 4.03.

The LBCB shall develop a system of marking alcoholic products sold through the Package Store or delivered through the Delivery Site as it deems appropriate, using cost-effective, readily available technology, so products sold/delivered may be tracked back to individual Permittees.

### **Fees for Non-Resident Permits.**

Authority: KMC § 4.03.090(G).

The following fees are established for Non-Resident Permits at the Package Store:

\$10 10-day Non-Resident Permit

\$20 30-day Non-Resident Permit

\$30 90-day Non-Resident Permit

\$40 180-day Non-Resident Permit

### **Prices, Fees and Charges for Package Store.**

Authority: KMC § 4.03.130.

Permit fees for the Package Store are set out above for the annual Permit and renewal of the annual Permit. All other prices, fees and charges shall be set by the Delivery Site/Package Store Manager with approval by the LBCB.

### **Penalties for Violations.**

Authority: KMC §§ 4.02.170 and 4.03.140.

Penalties for violations of Chapters 4.02 and 4.03 are set forth in Table "B," below.

**TABLE A**

Type of Alcohol	Daily Limit at Package Store
Distilled Spirits	750 ml
Beer	2.8125 Gallons
Wine	3 Liters
Liqueurs	1.5 Liters

<b>WRITTEN ORDER IMPORTATION LIMITS PER CALENDAR MONTH THROUGH DELIVERY SITE (Alaska Statute 04.11.150(g), Resolution No. 11-41 and Ordinance No. 14-08)</b>	
4.5 Liters of Liquor and/or Liqueurs	6 Bottles @ 750 ml each
24 Liters of Wine	16 Bottles @ 1.5 Liters each
12 Gallons of Beer	128 12-ounce cans/bottles
	4 ¼ Cases @ 30 per case
	5 1/3 Cases @ 24 per case
	10 2/3 Cases @ 12 per case
	21 1/3 Six-Packs

<b>PERSONAL DAILY IMPORTATION LIMITS FOR PERSONS TRAVELING TO KOTZEBUE<sup>1</sup></b>
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**(Alaska Statute 04.16.125(b)(1))**

1 Liter of Liquor and/or Liqueurs

2 Liters of Wine

1 Gallon of Beer (10 2/3 12-ounce Cans/Bottles)

<sup>1</sup> These daily amounts, or less, do not have to go through the City-Owned Delivery Site.

**TABLE B**

SECTION VIOLATED	Fine for first violation more than 2 years after a prior violation of this chapter; 120-day Permit suspension	Fine for any violation within 2 years following a prior violation of this chapter; 2 year Permit suspension
4.02.060(A) Importation Limits	\$500	\$1,000
4.02.060(B) Alcohol Percentage	\$500	\$1,000
4.02.070(B) Personal Importation	\$500	\$1,000
4.02.070(C) Improper Transfer	\$500	\$1,000
4.02.100(B) Delivery Conditions	\$500	\$1,000
4.02.100(D) Unauthorized Receipt	\$500	\$1,000
4.02.120(F) False Statements	\$500	\$1,000

4.02.140(A) Permittee Unauthorized Use	\$500	\$1,000
4.02.140(B) Failure to Prevent Unauthorized Use	\$500	\$1,000
4.02.140(C) Using Another's Permit	\$500	\$1,000
4.02.140(F) Altering Permit	\$500	\$1,000
4.02.140(G) Copying Permit	\$500	\$1,000
4.02.140(H) Improper Use of Permit	\$500	\$1,000
4.03.060 Violation of Daily Limits	\$500	\$1,000
4.03.080(B) Delivery Conditions	\$500	\$1,000
4.03.080(D) Unauthorized Purchase	\$500	\$1,000
4.03.090(F) False Statements	\$500	\$1,000
4.03.110(A) Permittee Unauthorized Use	\$500	\$1,000

4.03.110(B) Failure to Prevent Unauthorized Use	\$500	\$1,000
4.03.110(C) Using Another's Permit	\$500	\$1,000
4.03.110(F) Altering Permit	\$500	\$1,000
4.03.110(G) Copying Permit	\$500	\$1,000
4.03.110(H) Improper Use of Permit	\$500	\$1,000

**Penalty for Violations by Non-Resident Permit Holders**

A Non-Resident Package Store Permittee who violates any of the provisions of KMC Chapter 4.03 shall have his/her Permit permanently revoked, shall be fined \$1,000 and shall not be eligible to apply for another Non-Resident Package Store Permit.

Footnotes:

--- (2) ---

**Editor's note**— Printed herein are the local beverage control board regulations of the city. Ordinance No. 14-08, § 5, Exhibit A, adopted on March 20, 2014. The regulations have been codified as enacted. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. Additions made for clarity are indicated by brackets.

**Cross reference**— Alcohol, Tit. 4, Alcoholic beverage delivery site, Ch. 4.02; alcoholic beverage package store, Ch. 4.03.

# **Kotzebue Municipal Code**

## **Title 7**

### **Marijuana**

[Title Page]

**Title 7**

**MARIJUANA**

**Chapters:**

**7.01**

**Marijuana**

**7.02**

**Local regulatory authority.**

# **Kotzebue Municipal Code**

## **Title 7**

### **Chapter 7.01**

**[Marijuana]**

**Chapter 7.01****MARIJUANA****Sections:**

- 7.01.010 Consuming marijuana in a public place.**
- 7.01.020 Allowing prohibited marijuana use prohibited.**
- 7.01.030 Marijuana use without consent of property owner.**
- 7.01.040 Marijuana use in or on motor vehicles, watercraft and aircraft prohibited.**
- 7.01.050 Marijuana possession and use under the age of twenty-one prohibited.**
- 7.01.060 Sale of non-marijuana items.**
- 7.01.070 Prohibiting certain product manufacturing methods of marijuana concentrates.**
- 7.01.080 Violations and remedies.**
- 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 one hundred dollars and an optional court appearance. The fine cannot be judicially reduced. (Ord. No. 15-06, § 6(Exh. A), 3-19-2015; Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**7.01.040 Marijuana use in or on motor vehicles, watercraft and aircraft prohibited.**

Marijuana use in or on motor vehicles, on the deck or in the wheelhouse of a watercraft, or in an aircraft is prohibited. Motor vehicle means a vehicle which is self-propelled except a vehicle moved by human or animal power as set forth on Alaska Statute 28.90.990(a)(17).

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**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 paraphernalia.

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 pur-

pose of sales or for the purpose of passage by the general public to any other retail business establishment.

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. B), 10-17-2019)

# **Kotzebue Municipal Code**

## **Title 7**

### **Chapter 7.02**

**[Local Regulatory Authority]**

## Chapter 7.02

### LOCAL REGULATORY AUTHORITY

#### Sections:

- 7.02.010 Local regulatory authority established.
- 7.02.020 Intent.
- 7.02.030 Purpose and scope of local regulatory authority.
- 7.02.040 Duties and powers.
- 7.02.050 Cooperation with state marijuana board.
- 7.02.060 Local regulatory authority review of issuance, renewal or transfer of licenses.
- 7.02.070 Pre-application conference and State of Alaska application review process.
- 7.02.080 Premises to be inspected.
- 7.02.090 Regulations of hours of operation of a licensed marijuana business establishment.
- 7.02.100 City sales tax.
- 7.02.110 Video surveillance and camera recording.
- 7.02.120 Local regulatory authority report of violations.
- 7.02.130 Prohibitions.

#### 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 mak-

ing, within the corporate boundaries of the City of Kotzebue. (Ord. No. 19-01 §4 (Exhibit A), 8-16-2018)

(Ord. No. 19-01, § 4 (Exh. A), 8-16-2018; Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

#### 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.
- (Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

#### 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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

#### **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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

#### **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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

#### **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 licensee's 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 li-

cence 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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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 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 thirty days of receipt of an application regarding his/her review of the application.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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 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 forty-eight 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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**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.

(Ord. No. 19-06, § 4(Exh. E), 10-17-2019)

**LBCB/LRA  
Rules  
and  
Procedures**

LOCAL BEVERAGE CONTROL BOARD/LOCAL REGULATORY AUTHORITY RULES AND PROCEDURES (as approved by City Council Resolution 19-41)

**Hours of Operation.**

Retail marijuana stores in the City of Kotzebue shall be closed from 10:00 p.m. to 8:00 a.m., local time, all day on Sundays and all day on local, state and federal election days. [7.02.090]

**Number of Retail Operations.**

No licensee may operate more than one (1) retail store in the City of Kotzebue. Market demands and business development will determine the number of retail operations, but there shall be no more than three (3) retail marijuana stores in the City of Kotzebue. [7.02.030(B)(7)]

**Sales Taxes and Utility Payments.**

Licensees operating retail marijuana stores must stay current on their sales tax collections, remittances and reporting obligations as is required for all retailers in Kotzebue pursuant to Kotzebue Municipal Code, Chapter 3.20. Licensees operating retail marijuana stores must stay current on their water, utility and refuse obligations and payments as is required for all utility users pursuant to Kotzebue Municipal Code, Chapters 8.04 and 13.04. Failure to do so may be grounds for a protest to the Alaska Marijuana Control Office and revocation of the licensee's business license as is the case for all retailers in the City of Kotzebue. [7.02.060(12) and (13) and 7.02.100]

**Excise Taxes.**

The Northwest Arctic Borough ("NAB") currently imposes a cultivation-based excise tax on retail marijuana stores in Kotzebue. [NAB Code 7.14.010 et seq.] Imposition of a separate City excise tax on retail marijuana sales at this time does not seem warranted or viable.

**Complaints Regarding the Operation of Retail Stores.**

Written complaints regarding the operation of retail stores may be filed with the Local Beverage Control Board/Local Regulatory Authority by filing such written complaints with the City Clerk of the City of Kotzebue on the form provided by the City. Licensees shall post a Notice of this complaint option in their stores and have copies of the City's "COMPLAINT REGARDING RETAIL MARIJUANA STORE" available in their stores. Notice of any such complaint shall be provided to the licensee by mail within ten (10) working days of receipt of the complaint. [7.02.120]

**Investigation of Complaints.**

The Local Beverage Control Board/Local Regulatory Authority shall investigate complaints filed regarding retail marijuana stores by submitting a request for investigation to the City Manager. Results of the City Manager's investigation shall be provided to the licensee. Based upon results of the investigation, the Local Beverage Control Board/Local Regulatory Authority may take whatever action is deemed appropriate including, but not limited to, reporting such to the Alaska Marijuana Control Office, revoking the licensee's business license in the City of Kotzebue and/or imposing fines and civil penalties as set out herein.

**Hearings on Complaints.**

If the Local Beverage Control Board/Local Regulatory Authority determines that a complaint regarding the operation of a retail marijuana store has apparent merit, the Local Beverage Control Board/Local Regulatory Authority shall set a formal hearing at which time the licensee shall have an opportunity to present a response to the complaint before the Local Beverage Control Board/Local Regulatory Authority determines the appropriate action, if any, to be taken regarding the complaint. [7.02.040]

### **Fines/Civil Penalties.**

Pursuant to Kotzebue Municipal Code 1.20.030, *Violations - Fines - Separate Offenses*, the Local Beverage Control Board/Local Regulatory Authority may impose a fine of up to Three Hundred Dollars (\$300.00) and/or pursuant to Kotzebue Municipal Code 1.20.040, seek a civil penalty of up to One Thousand Dollars (\$1,000.00), including costs, interest and attorney's fees. Failure by the licensee to pay any such fine and/or civil penalty duly imposed shall be reported to the Alaska Marijuana Control Board and may be grounds for revocation of the licensee's business license in the City of Kotzebue. [7.02.040(C)]

### **Signs, Merchandise, Advertisements and Promotions.**

The Local Beverage Control Board/Local Regulatory Authority shall monitor and strictly enforce the requirements and mandates of 3 AAC 306.770, *Signs, merchandise, advertisements and promotions*. Any violations thereof shall be promptly reported to the Alaska Marijuana Control Office and may be grounds for fines and/or civil penalties, as set out herein and revocation of the licensee's business license in the City of Kotzebue. [7.02.040(C)]

### **Marijuana Handler Permit.**

The Local Beverage Control Board/Local Regulatory Authority shall monitor and strictly enforce the requirements and mandates of 3 AAC 306.700, *Marijuana handler permit*. Any violations thereof shall be promptly reported to the Alaska Marijuana Control Office and may be grounds for fines and/or civil penalties, as set out herein and revocation of the licensee's business license in the City of Kotzebue. [7.02.040(C)]

### **Educational Materials.**

The Local Beverage Control Board/Local Regulatory Authority may work with local health care providers and educators to find/develop educational materials on the health effects of marijuana use and the prolonged effects of marijuana/presence of marijuana indicia in users. Any such materials shall be made available for distribution on such terms and conditions as are deemed appropriate, including making such materials available for distribution at retail marijuana stores in the City.