



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Navarre, Mayor *MN*
Brent Johnson, Assembly Member *(B) for B.J.*

DATE: February 11, 2016

SUBJECT: Amendments to Ordinance 2016-03, Local Option Zoning code

After hearing concerns expressed regarding the 500 foot buffer area wherein KPB 21.25 regulated uses could not operate the sponsors are proposing reducing this buffer to 300 feet. A 300 foot buffer has already been considered to be a reasonable protective area in several instances in Title 21 of the borough code. The 300 foot buffer is consistent with the KPB 21.11 notice provisions which require notice regarding local option zoning district (LOZD) matters be distributed to property owners within 300 feet of the boundaries of an LOZD. The 300 foot buffer is also consistent with KPB 21.29.050 which requires a 300 foot distance between processing equipment and boundaries of a material site. Also excavation in a water table on a material site parcel may occur with permission from the planning commission if the excavation is more than 300 from the material site parcel boundary. Therefore, the sponsors are recommending reducing the buffer restricting KPB 21.25 uses outside LOZDs from 500 feet to 300 feet.

Marijuana establishments are restricted in this 300 foot buffer because it is also being proposed that marijuana be removed from the KPB 21.25 regulations in Ordinance 2016-07 Substitute. It is consistent with the Marijuana Task Force recommendation to address the neighborhood concerns regarding marijuana establishments through the LOZD process.

A buffer area around the boundaries of the LOZD is an important component of the LOZD ordinance because the protections afforded residents and property owners within an LOZD will be hollow if an industrial or disfavored use can directly abut the residential lots within an LOZD. Generally, in zoning plans residential and industrial districts might be separated by mixed use and commercial districts, they would not abut each other. The 300 foot buffer affords protection to lot owners within an LOZD from living next door to the very same uses they formed the LOZD to avoid.

Concerns have also been expressed about the removal of the requirement that 75 percent of the lot owners within a proposed LOZD petition for its formation. This supermajority petition process was unworkable as it required a significant amount of time and legwork on the part of those attempting to form an LOZD and also placed the responsibility of accurately explaining the borough's requirements with the sponsors, rather than the planning department. An amendment is proposed to meet the concern that an LOZD needs strong neighborhood support while still reducing the cumbersome aspects of the current petition process. The sponsors are proposing that in order for an LOZD to be introduced owners of 60 percent of the lots will have to support formation of the LOZD. While an LOZD would still require six property owners to initiate the process it would require significantly more owner support for the LOZD ordinance to be introduced by the assembly. There will also be substantial public process involved in the formation of an LOZD as once an application is filed there will be a community meeting, at least one planning commission hearing, and show of support by owners of 60 percent of the lots in order for the ordinance to be submitted to the assembly. Once submitted to the assembly there will be an opportunity for comment at the time of assembly introduction, as well as at least one public hearing at the assembly level.

Your consideration of these proposed amendments is appreciated.

- Amend KPB 21.44.040(A) in Section 1 as shown in **bold and underline** and [BOLD, SMALL CAPS, BRACKETED] as follows:

21.44.040. – [AREA AND PETITION] Formation requirements.

- A. Except as otherwise provided, the minimum area that may be included in [A LOCAL OPTION ZONING DISTRICT] an LOZD is 12 lots. [THE MINIMUM AREA THAT MAY BE INCLUDED IN A LOCAL OPTION ZONING DISTRICT IN AN INDUSTRIAL DISTRICT AS DESCRIBED IN KPB 21.44.200 IS SIX LOTS.] At least [THIRTY] 30 percent of the lots within a proposed R-W district must be [DIRECTLY ADJACENT TO THE] waterfront lots. [TWO-THIRDS OF THE PARCELS WITHIN THE PROPOSED DISTRICT MUST BE OF THE AVERAGE SIZE PREVAILING WITHIN THE PROPOSED DISTRICT. HOWEVER, DISTRICTS WITH DISPARATE PARCEL SIZES MAY BE FORMED WHERE 100 PERCENT OF THE PARCELS VOTE IN FAVOR OF THE DISTRICT.] Lots [AND PARCELS] in [A PETITION AREA] an LOZD must be contiguous [OR] and separated only by a street, alley, right-of-way, or easement. [PETITIONERS SHALL COORDINATE WITH T]The Planning Department [TO DESIGNATE APPROPRIATE DISTRICTS] shall create a [PROPOSED] draft local option zoning map for a proposed district based on land use, location, access, soils, topography, availability of utilities, encumbrances and permits. Conditional land uses governed by KPB 21.25.040 shall not be permitted within a [500]300-foot radius of the boundary of an LOZD. Any improvements related to a marijuana establishment as defined by KPB 7.30 shall not be located within 300 feet of an LOZD. An LOZD may be established within a [500]300-foot radius of an existing KPB 21.25.040 conditional land use permit or marijuana establishment. The [500]300-foot radius is measured from parcel boundaries.

- Amend KPB 21.44.050 in Section 1 as shown in **bold and underline** as follows:

21.44.050 - Public hearings and notification requirements.

The planning commission shall hold at least one public hearing on local option zoning [PETITIONS] applications. Public notice of the hearing shall comply with KPB 21.11.020. In addition, property owners within the proposed district and within 300 feet of the boundaries of the district shall receive a copy of the public notice at least seven days prior to the hearing. The planning commission shall recommend to the assembly approval, disapproval, or modifications of the proposed [LOCAL OPTION ZONING DISTRICT] LOZD. **The planning department shall distribute a summary of the LOZD's regulations and boundaries to property owners within the proposed LOZD. The summary shall include an opportunity for property owners to show support for the LOZD by their signature.**

- Amend KPB 21.44.060 in Section 1 as shown in **bold and underline** and [BOLD, SMALL CAPS, BRACKETED] as follows:

21.44.060. - Assembly action.

A. The assembly shall approve, disapprove, or modify the proposed [LOCAL OPTION ZONING DISTRICT] LOZD. The assembly, in its legislative capacity, [RESERVES THE RIGHT TO] may disapprove [A LOCAL OPTION ZONING DISTRICT] an LOZD [IN ITS LEGISLATIVE CAPACITY] notwithstanding the district's meeting the criteria of this chapter.

B. Any LOZD approved must meet the formation criteria set forth in KPB 21.44.040 and the minimum requirements of the LOZD being formed.

C. Prior to **introduction to the assembly [ACTION]** the planning department will provide the owners of each parcel within the proposed LOZD **a summary statement of the LOZD's regulations and boundaries as required by KPB 21.44.050. [AN OPPORTUNITY TO SIGN AN ADVISORY STATEMENT IN FAVOR OR AGAINST THE LOZD.] In order for the LOZD to be submitted to the assembly for introduction the owners of 60 percent of the parcels within the LOZD must be in favor of formation of the LOZD as represented by a parcel owner's signature on the LOZD summary distributed by the planning department.**