

Kenai Peninsula Borough Legal Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Patty Burley, Acting Borough Attorney *PB*

DATE: September 9, 2021

RE: Ordinance 2021-19-15, Appropriating \$150,000 to the Legal Department to Cover Costs of Hearing Officers for Planning Commission Appeals (Mayor)

Since the start of this fiscal year, the borough has seen an increase in the number of appeals from planning commission decisions. KPB 21.20.250 authorizes any party of record to appeal a decision of the planning commission by filing a fee as set out in the most current Schedule of Rates, Charges and Fees. Currently that fee is \$300.00. In the past, a rotating list of attorneys was used as hearing officers. In an effort to save money, the borough has switched to utilizing the State of Alaska, Office of Administrative Hearings to serve as the hearing officer for the appeals. As the legal department represents both the planning department and the planning commission, it cannot also serve as the hearing officer. As of today, there are three pending appeals from planning commission decisions.

Fees and costs associated with the hiring of hearing officers are paid from the legal department's "Legal Services" account. The total unencumbered balance of this account is currently \$1,000. While it is difficult to predict in any one given year how many appeals there will be, it is clear that any requests from a gravel pit to obtain or modify a conditional use permit is controversial and will result in an appeal, no matter what decision is made by the Planning Commission.

Additionally, the creation of Local Option Zoning Districts has led to a large increase in appeals with neighbors using the LOZD process as a way to pick and choose what to allow within their neighborhood. The LOZD's have become very contentious and are resulting in a large number of appeals.

It is estimated that an additional \$150,000 may be required to pay for hearing officers to conduct planning commission appeals. If any of the funds appropriated are not used, they will lapse to the General Fund at the end of this fiscal year.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100.27910</u>
Amount:	<u>\$ 150,000</u>
By: <i>PP</i>	Date: <u>9/3/2021</u>
By: <i>BH</i>	