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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

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

THRU: Mike Navarre, Mayor *MN*

FROM: Holly Montague, Deputy Borough Attorney *HM*
by JT

DATE: December 22, 2015

SUBJECT: Local Option Zoning Rewrite/Sectional Analysis
Ordinance 2016-03

To assist in understanding the changes made by this ordinance, following is a sectional analysis that gives brief explanations of the changes.

Local Option Zoning District (LOZD)

KPB 21.44.010. Purpose.

This section has been slightly revised to remove reference to the petition process which is proposed for repeal.

KPB 21.44.020. State and Federal Agencies regulated.

This section is revised to more accurately reflect the law that state and federal entities may be exempt from local regulation unless a statute provides otherwise. AS 38.30.020 specifically requires state projects to comply with local land use regulations.

KPB 21.44.030. Formation Methods.

The title of this section is changed from "Initiation Procedures" to accurately reflect the revised content of the section. The requirement that the record owners of $\frac{3}{4}$ of the parcels within a proposed LOZD petition to form the LOZD has been removed. This required a lot of footwork on the part of the interested property owners, lead to inaccurate representations of local option zoning to the community, and placed difficult time constraints on the formation process. In the proposed ordinance any number of property owners can meet with the planning department to discuss formation of a local option zoning district.

Former section B is deleted as unnecessary to the process which allowed Advisory Planning Commissions to propose local option zoning districts.

The formation of LOZDs as a companion to preliminary plat of an area is retained. To date, eight LOZDs have been formed at the time of subdivision.

KPB 21.44.040. Formation requirements.

The title is revised from "Area and Petition" requirements to more accurately reflect the content of the section.

Section A. The minimum number of lots to be included in an LOZD remains at 12. In a waterfront residential district 30% of the lots must still be waterfront. Language is clarified so that lots cannot be excluded from the district which will create "donut holes."

The planning department will prepare a map based on standards to form a homogeneous district. These standards are land use, location, access, soils, topography, availability of utilities, encumbrances, and permits.

Conditional uses regulated by KPB 21.25.040 may not be located within 500 feet of a local option zoning district. The nature of local option zones is such that lots on the outer parameters of a local option zone may still be directly abutting the very uses they seek to prohibit in a residential area. However, if a conditional use preexists the LOZD, the LOZD may be formed within that 500 foot boundary as the property owners will be on notice that the disfavored use already exists.

Section B. This subsection is revised to reflect that the owners of six lots proposed for regulation file an application for an LOZD, rather than a petition with $\frac{3}{4}$ of the property owners signatures.

Section C. Once a signed application is filed with the planning department the planning department holds a community meeting to explain the process and effect of forming an LOZD and to receive input from the neighborhood about the formation of the LOZD. After this meeting and considering the standards set forth in KPB 21.44.040(A) planning staff makes a recommendation to the planning commission and assembly regarding the formation and boundaries of the district.

Section D. Parcel sizes and numbers in a subdivision can change through the replat process. This new section clarifies the date which will be used to determine whether a proposed LOZD meets the formation requirements with regards to parcel size and numbers.

Section E. An abutting property owner whose parcel exceeds the size of those allowed in the LOZD may request the owner's parcel be included in the LOZD.

KPB 21.44.050. Public hearings and notification requirements.

This section does not have substantive changes. It is revised to reflect that a neighborhood application, rather than a petition, is filed with the planning department.

KPB 21.44.060. Assembly Action.

This section is revised to clarify that LOZDs should still meet the minimum formation requirements, e.g. lot size and number of lots, at the assembly approval stage. The section is

amended to allow property owners an opportunity to sign an advisory statement for or against formation of the LOZD for the assembly's consideration.

KPB 21.44.070. Variances.

This section has been placed more appropriately after all the formation and application criteria is set forth and is now KPB 21.44.095.

KPB 21.44.080. Application.

Subsection C simplifies and expands the language requiring compliance with other laws to include state as well as federal law. Subsection D is deleted as LOZDs pre-existing the 2000 rewrite are addressed later in the chapter.

KPB 21.44.090. Local Option zoning map.

This section is modernized to reflect that LOZD mapping will be available on the borough website.

KPB 21.44.095. Variances.

Renumbered from KPB 21.44.070.

KPB 21.44.100. Prior existing structures.

The current section is modified to allow an application for reconstruction to be within 12 months, rather than six months, of damage or destruction of the structure.

KPB 21.44.110. Nonconforming uses.

This section is clarified as to who may appeal a nonconforming use determination—the applicant/property owner and the property owners within the LOZD. Additionally, conditions may be placed on the nonconforming use to protect the residential nature of the LOZD. For example, hours of operation or screening requirements could be implemented that would diminish the commercial appearance and promote the residential appearance of the property.

KPB 21.44.120. nonconforming lots.

This section has not changed.

KPB 21.44.130. Home Occupations.

Much of the substance of the standards for a home occupation are not changed, however, language is added to clarify those standards which should aid in interpretation and enforceability.

Paragraph (C)(4) is deleted as being redundant of the nuisance language added to (C)(3).

Paragraph (C)(5) is clarified to note that retail sales are allowed where they are incidental to the service being provided by a home occupation, e.g., the hairdresser who sells shampoo or a piano teacher who may sell lesson books or sheet music that are used in providing piano instruction.

In paragraph (C)(6)-(12) outside storage of equipment or personal property and vehicles is limited to promote the residential character of the LOZD. One nonresident employee of the home occupation is allowed, and off street parking shall not be used by the home occupation.

Subsection D. The standards must be continuously met by the home occupation.

Subsection E. The list of allowed occupations is revised to clarify that the occupations listed are illustrative of a number of occupations that may qualify as home occupations as long as the standards and conditions are met. The list of occupations that could meet the conditions of a home occupation are exhaustive, therefore, specifically allowed home occupations are deleted since even these home occupations could be disallowed if the businesses became so active that they created impacts such as increased traffic and noise that undermined the residential nature of the lot which is the subject of the home occupation.

Subsection F. A list of uses specifically disallowed as home occupations is added.

Subsection G. The standard notice regarding enforcement of violations pursuant to KPB 21.50 is added.

Subsections H-I. The requirement for home occupations to obtain a permit is deleted. As long as home occupations are operated within the requirements of the standards and conditions they are allowed.

KPB 21.44.135. New Structures-Development Notice.

In order to avoid building within established setbacks a notice is required prior to constructing a structure or a permanent foundation in an LOZD.

KPB 21.44.140. Rezoning.

Language is added clarifying how the number of signatures is calculated for a rezone petition. It is also clarified that the community meeting required for an original LOZD application is not required for a rezone. The planning commission and assembly processes and hearings are still mandatory.

KPB 21.44.150. Violations—Enforcement.

This section remains unchanged.

KPB 21.44.160. Single-Family residential district (R-1).

A maximum lot size is added for all LOZDs of five acres as this will avoid the problem of pulling large parcels into a residential LOZD which may be suitable for a number of different uses. A paragraph is added to limit the amount of lot area that can be covered with structures to preserve open space on lots and between houses consistent with a residential zoning scheme. Livestock and pet provisions are added, allowing for a reasonable amount of animals in residential areas but not so many that they should rise to the level of nuisance by noise, odor, or other negative impacts associated with animals that are not consistent with a residential neighborhood. Other uses that detract from residential character such as outhouses or collecting junk vehicles are also prohibited.

KPB 21.44.165. Small lot residential district (R-2).

This new zone is similar to the single family residential zone; however, the minimum lot size is lowered to 20,000 square feet. The LOZD is meant to accommodate those subdivisions in the

borough outside cities that have community water or sewer. The setbacks are less than those in the R-1 zone because of the smaller lot size.

KPB 21.44.170. Rural residential (R-R).

The minimum lot size in this zone is 100,000 square feet, and the maximum is five acres. The setbacks are greater than those in the R-1 zone due to the larger lot size. A larger number of pets or livestock are allowed given the larger minimum lot size in the district. There are also conditions regarding the disposal of animal waste.

KPB 21.44.175. Residential - Waterfront (R-W).

This district has a lot size minimum of 40,000 square feet and maximum lot size of 100,000 square feet. Setbacks are similar to the R-1 district which has the same lot size requirements. A difference from the R-1 zone is that one or two rental cabins are allowed depending on whether the primary use of the lot is a single family home (2 rental cabins allowed) or a duplex (one rental cabin allowed).

KPB 21.44.180. Multi-Family residential district (R-M).

This district is renamed and allows for a multi-family dwelling unit, not to exceed four units.

KPB 21.44.190. Mixed use district (C-3).

This district is deleted as it is not relevant in an area that does not have an overall zoning plan.

KPB. 21.44.200. Industrial District (I).

This district is deleted as it is not relevant in an area that does not have an overall zoning plan.

KPB 21.44.210. Residential Conservation District (R-C).

This district is deleted as it is not relevant in an area that does not have an overall zoning plan.

KPB 21.44.220. Record notice of local option zoning district.

The requirement that the petitioners pay the recording fee is omitted as there is no longer a petition process to form an LOZD and ultimately any zone is approved by the assembly.

KPB 21.44.230. Definitions.

Definitions are added regarding various kinds of animal or livestock to aid in interpretation and enforcement of the code. Definitions of specific types of home occupations are eliminated. As stated above there are numerous business endeavors that could qualify as home occupations and it would not be possible to define them all.

KPB 21.44.240. Table 1. Local Option Zoning Districts.

The table is deleted and will be a separate document available on the planning department website.

KPB 21.46.040. Single-Family Residential (R-1) Districts.

For the sake of continuity and consistency the first three LOZDs formed prior to the adoption of standardized zoning districts in 2000 are incorporated into the zoning district list in KPB chapter 21.46.

KPB 21.46.100. Preexisting LOZDs.

This section grandfathers structures and uses in the three first LOZDs as of the adoption date of this ordinance.

KPB 21.50.050. Fines.

The fine schedule is repealed and reenacted as KPB 21.50.055. Specific reference to certain zoning districts are deleted in favor of fines applicable to all LOZDs. This is consistent with including the first three LOZDs formed in the general LOZD ordinance.

KPB 21.46.060, KPB 21.46.070, 21.46.080 and KPB 21.46.090 have been deleted as these types of districts no longer exist (Residential Conservation district, Mixed Use district, Industrial Mixed Use district and Industrial district).