

E. NEW BUSINESS

- 5. Ordinance 2022-XX: Amending Chapter KPB 21.50 Relating to Stop Work Orders & Fine Amounts in Stipulated Agreements.**

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor

FROM: Robert Ruffner, Planning Director

DATE: June 23, 2022

RE: Ordinance 2022-__ Amending KPB Chapter 21.50 Relating to Stop-Work Orders and Fine Amounts in Stipulated Agreements (Mayor)

Having appropriate mechanisms to address violations of code is an important means of ensuring code compliance. Presently there is a large gap between the kindest, gentlest approach and the heaviest mechanisms to achieve compliance. In many cases, this means stipulated agreements (SA) which are settled for half of the daily fine, regardless of how impactful the violation may be to residents and taxpayers. Stipulated agreements are an important tool and have been successfully used in many cases to keep violations from escalating to court or administrative proceedings. We are not proposing to eliminate the SA approach, but are seeking to make it more appropriate by providing the flexibility to make the fine commensurate with the violation(s). This should result in more timely responses and with violators coming into compliance through terms contained in the SA.

A tool we presently lack is a stop-work order which would assist in addressing violations without necessitating an SA. In those cases where a cease-and-desist order is issued and not followed—but eventually resolved with an SA—there is little incentive for the violator to actually stop, since the end fine as currently established in code results in half of a daily fine, regardless of what happened between issuing an order and signature on a stipulated agreement. This new stop-work tool adds the incentive to actually stop work with real consequences if work is not stopped.

Finally, many of the violations we are now addressing require substantial expense to the borough. Investigations, field surveys, repeat site visits and compliance efforts can easily cost thousands of dollars only to be settled for \$150 with the tools presently available; short of court or administrative action. These changes add more flexibility to help us resolve issues more quickly and more in line with the expenses borne by the taxpayer.

Your consideration of this ordinance is appreciated.

Introduced by:
Date:
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

**AN ORDINANCE AMENDING KPB CHAPTER 21.50 RELATING TO STOP-WORK
ORDERS AND FINE AMOUNTS IN STIPULATED AGREEMENTS**

WHEREAS, Kenai Peninsula Borough (Borough) code at KPB 21.50.040 presently provides for various remedies for violations of KPB Title 21, including initiation of a civil action, initiation of an administrative enforcement proceeding, and permit revocation; and

WHEREAS, Borough code 21.50.090 allows the Borough to enter into stipulated agreements with an owner or occupant of property for violations on the property; and

WHEREAS, the presently-enumerated remedies are often inappropriate for first-time violators, minor violations, or an initial enforcement, thereby hampering the Borough's ability to take appropriate enforcement action or scale up enforcement action; and

WHEREAS, the availability of a stop-work order as an additional remedy provides Borough staff with a tool for less-severe enforcement action and a better starting point for any potential enforcement action or stipulated resolution; and

WHEREAS, the present maximum stipulated fine amount of one-half the fine for a one-day violation unnecessarily limits the Borough's ability to recoup enforcement costs such as assessment, investigation, surveying, and pursuing violations; and

WHEREAS, providing the Planning Director with greater discretion in the amount of a stipulated fine will allow the Borough to more effectively address and resolve violations without drawn out enforcement hearings or court actions;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.50.030(A) is hereby amended as follows:

21.50.030. - Violations.

A. Each of the following is a violation of borough code:

1. A use or occupancy of land or a structure that conflicts with a provision of KPB Title 20 or 21, or a permit, entitlement or enforcement order issued under these titles.
2. The construction, alteration, repairing or moving of a structure or part thereof that conflicts with a provision of, or a permit issued under KPB Title 20 or 21.
3. The violation of the terms of an enforcement notice issued under this chapter.
4. The development, occupancy or use of any land or structure for which KPB Title 20 or 21 requires a permit, variance or exception without first obtaining the permit, variance or exception, or after a required permit has been suspended or revoked.
5. Acting in any manner that this title declares to be prohibited, unlawful, a violation, or an offense.
6. To cause or permit another to commit a violation of KPB Title 20 or 21.
7. Failure to obtain a permit required by this title is a violation. An application for a permit, permit modification, or variance may not be processed once an enforcement notice has been issued until the enforcement notice is resolved.
8. Ownership, control or the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of KPB Title 20 or 21, or a permit issued under this title.
9. Failure to abide by a stop-work order.

SECTION 2. That KPB 21.50.040 is hereby amended as follows:

- A. For any violation of this title the borough may bring a civil action against the violator for any one or more of the following:
 1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.
 2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
 3. To recover damages to the borough caused by the violation.
 4. To recover a civil penalty not exceeding \$1,000.00 for each violation.
- B. For any violation of this title, the borough may bring an administrative enforcement proceeding under this chapter against the violator for any one or more of the following:

1. To correct or abate the violation.
2. To recover a civil penalty not exceeding \$1,000.00 per day for each violation in accord with the fine schedule set forth at KPB 21.50.055.
3. To cease and desist a violation set forth in KPB 21.50.030.

C. Permit Revocation.

1. A permit may be revoked for failure to comply with the terms of the permit or with applicable provision of Title 21. Staff shall issue an enforcement notice pursuant to KPB 21.50.100 and make a request for a revocation hearing and a written recommendation to the hearing officer by filing the same with the borough clerk. The clerk shall issue notice to the permittee of the revocation hearing at least 20 but not more than 30 days prior to the hearing. The permittee and staff shall file all evidence relevant to the permit revocation with the borough clerk 7 days prior to the hearing. If the noncompliance which lead to the request for revocation is satisfactorily resolved the administrative official may dismiss the revocation proceeding.
2. Pursuant to the Alaska rules of appellate procedure an appeal from the hearing officer's decision on revocation may be taken to the superior court in Kenai within 30 days of the date of distribution.

D. For any violation of this title, the borough may issue a stop-work order against the violator.

[D]E. No remedy provided in this section is exclusive, but is cumulative of all other remedies available under this chapter or at law or in equity.

SECTION 3. That KPB 21.50.055(A) is hereby amended as follows:

21.50.055. - Fines.

A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00

KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00

KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.030(A)	Violations	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That KPB 21.50.090(B) is hereby amended as follows:

21.50.090. - Stipulated agreement.

- B. A stipulated agreement between the borough and a property owner or occupant shall constitute an admission and acknowledgement by the property owner or occupant of the alleged code violation and an agreement to remedy the violation and pay civil fines as described within the stipulation and within the timeframe agreed upon. [THE STIPULATED FINE SHALL BE ONE-HALF THE FINE FOR A ONE DAY VIOLATION. WHERE THERE IS MORE THAN ONE VIOLATION ASSOCIATED WITH THE STIPULATION THE STIPULATED FINE SHALL BE ONE-HALF OF THE HIGHEST ONE DAY FINE.] The stipulated fine amount will be set by the borough planning director or designee. Notwithstanding, if a violation or violations span more than one calendar week, the stipulated fine amount must be at least 25% of the total fine amount accrued during the period the property owner or occupant was in violation of borough code. The borough planning director, with concurrence of the borough mayor, may agree to a

fine below this 25% threshold upon a finding in writing that the stipulated fine serves a public purpose.

SECTION 2. That this ordinance is effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS _____ DAY OF _____, 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk