

Kenai Peninsula Borough Legal Department

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Brent Johnson, Assembly President *BJ*
Brandi Harbaugh, Finance Director *BH*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: October 11, 2022

RE: Ordinance 2022-19-20, Appropriating \$100,000 to the Legal Department to Cover Costs of Hiring Hearing Officers for Planning Commission Appeals (Johnson)

In FY2021, the Kenai Peninsula Borough (Borough) transitioned from hiring outside counsel on a case-by-case basis to utilizing the State of Alaska, Office of Administrative Hearings to serve as the hearing officer to adjudicate planning commission appeals. Currently, there are three pending appeals from planning commission decisions.

Ordinance 2021-19-15 appropriated \$150,000 for the payment of services of hearing officers in appeals from planning commission decisions and for the hiring of outside counsel in conflict cases. Of the \$150,000 appropriated in FY22, \$44,215 is encumbered for payment of two of the current pending appeals which were filed in FY22, and approximately \$19,600 lapsed back to the General Fund on July 1, 2022. With the final costs of the two ongoing appeals unknown, approximately 88 percent of the funds appropriated for hearing officers in FY22 were utilized.

While it is difficult to predict in any one given year how many appeals or conflict cases will require the services of a hearing officer or outside counsel, recent history suggests that the majority of the Planning Commission's conditional land use permit decisions will result in an appeal to the hearing officer.

It is currently estimated that an additional \$100,000 will be required to pay for hearing officers to adjudicate planning commission appeals.

Your consideration of the ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100.27910</u>
Am	<u>100,000</u>
By: <i>SK</i>	Date: <u>9/26/2022</u>