

Introduced by: Mayor  
Date: 07/07/15  
Hearing: 08/18/15  
Action: Enacted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2015-23**

**AN ORDINANCE AMENDING KPB 21.50.040, .050, .100, .120 AND .130 REGARDING  
ENFORCEMENT OF BOROUGH LAND USE REGULATIONS FOR CONFORMITY  
WITH ROAD SERVICE AREA ENFORCEMENT ACTIONS AND CURRENT  
PRACTICE**

**WHEREAS**, KPB Chapter 21.50 addresses violations and enforcement of borough land use regulations; and

**WHEREAS**, KPB Chapter 14.40 addresses violations and enforcement of borough right-of-way regulations; and

**WHEREAS**, on July 7, 2015 the administration presented an amendment to KPB chapter 14.40, including amendments to the sections regarding fines and other remedies available to the borough; and

**WHEREAS**, several amendments to KPB Chapter 21.50 are necessary to ensure continuity with KPB Chapter 14.40 with regards to fines and remedies available to the borough when pursuing enforcement, in particular KPB 21.50.040 and 21.50.050; and

**WHEREAS**, amendments to KPB 21.50.120 and .130 are necessary to ensure continuity with KPB Chapter 14.40 with regards to hearing procedure; and

**WHEREAS**, the Planning Commission reviewed this ordinance at its August 10, 2015 meeting and recommended approval by unanimous consent;

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

**SECTION 1.** That KPB 21.50.040(A) is hereby amended as follows:

- A. For any violation of this title [THAT PRESENTS AN IMMEDIATE THREAT TO LIFE, HEALTH, SAFETY, OR THE ENVIRONMENT,] 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.

**SECTION 2.** That KPB 21.50.050(A) is hereby amended as follows:

**21.50.050. 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.

...

**SECTION 3.** That KPB 21.50.100(A)(4) is hereby amended as follows:

**21.50.100. Enforcement proceeding.**

- A. The borough commences an administrative enforcement proceeding under this chapter by serving an enforcement notice that contains the following:

...

4. A description of the action, if any, that is required to correct or abate the alleged violation, including without limitation any one or more of the following, and the time within which the correction or abatement must occur:
  - a. The discontinuation of a use of land, a structure, or a permitted activity;
  - b. The abatement or removal of a condition or use of land, a structure, or a vehicle or other personal property;
  - c. The discontinuation of activity preparatory to the use or occupancy of land or a structure; [AND]
  - d. The repair or rehabilitation of a condition or use of land, a structure, or a vehicle or other personal property; and
  - [d]e. Obtaining a permit.

**SECTION 4.** That KPB 21.50.100(G) is hereby amended as follows:

- G. Continuing work when an enforcement [ORDER] notice includes a stop work order is a separate violation of this chapter.

**SECTION 5.** That KPB 21.50.120(E) is hereby amended as follows:

**21.50.120. Prehearing procedure.**

...

- E. Not less than seven (7) days before the hearing, the administrative official shall [MAKE AVAILABLE FOR INSPECTION AND COPYING BY] provide each respondent the administrative official's complete file regarding the enforcement notice, except for the redaction of [PRIVILEGED] confidential material. The file shall include at a minimum the enforcement notice, complaints concerning the violations alleged in the enforcement notice, all investigative reports regarding each alleged violation, and all correspondence to or from the administrative official regarding each alleged violation.

...

**SECTION 6.** That KPB 21.50.130(G)(2) is hereby amended as follows:

**21.50.130. Hearing.**

...

- G. Within 10 days after completion of the presentation of evidence, and any closing argument that the hearing officer may permit, the hearing officer shall issue a written decision on all matters at issue under the enforcement notice, with supporting findings of fact and conclusions of law. The borough clerk shall distribute the decision to each party by personal delivery or certified mail, or by facsimile or email to a party who has consented in writing to service by facsimile or email. The decision shall include a concise disposition statement either prescribing the fine imposed and the remedy for each violation, dismissing the enforcement notice, or declaring such other specific relief ordered by the hearing officer within the hearing officer's jurisdiction as defined by KPB 21.50.110(B) A decision shall also identify the violator or violators to whom the remedy applies and indicate that it is appealable and set forth the method and timing for such appeal. The remedies may include:

...

- 2. An order to a violator to pay to the borough a fine. The fine shall not exceed \$500 for each day of each such violation. Fines shall accrue from the date of the enforcement notice to the date the

matter is initially set for hearing. Accumulated fines for each violation may not be reduced by the hearing officer to less than the equivalent of one day's fine. The hearing officer may suspend a portion of a fine for a violation as a condition of compliance with other portions of the decision. [THE SUSPENDED PORTION OF A FINE MAY NOT EXCEED THE EQUIVALENT OF ONE DAY'S FINE FOR THE VIOLATION.] If a suspension of fine is ordered the respondent must pay not less than the equivalent of a one day fine. The hearing officer may not reduce or waive the double permit fee required by KPB 21.50.050(B). The fine shall be paid to the borough clerk who shall notify the administration of compliance with the order.

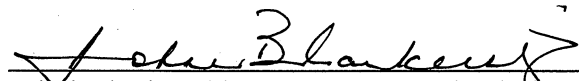
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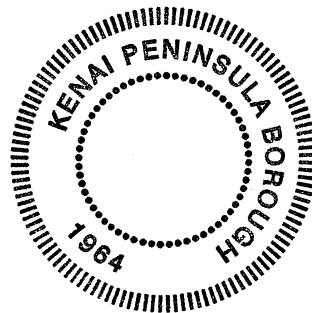
**SECTION 7.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF AUGUST, 2015.**

  
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Dale Bagley, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley  
No: None  
Absent: None