

CHAPTER 21.25. - CONDITIONAL LAND USE PERMITS

21.25.010. - Jurisdiction.

Chapter 21.25 applies to all land within the rural district of the Kenai Peninsula Borough, as designated in KPB 21.04.010. This chapter sets forth general provisions applicable to all conditional land use permits (CLUPs) and definitions. The provisions in this chapter are in addition to the chapters set forth in title 21 addressing specific types of CLUPs and where the provisions of this chapter and a CLUP chapter regulating a specific use conflict, the more specific chapter shall control.

(Ord. No. 98-33, § 2, 2-16-99)

21.25.020. - Purpose.

It is the purpose of this chapter to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.

(Ord. No. 98-33, § 2, 2-16-99)

21.25.030. - Definitions.

Unless the context requires otherwise, the following definitions apply to CLUPs:

Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.

- a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
- b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
- c. Two or more animal feeding operations under common ownership are considered, for the

purposes of these regulations, to be a single animal feeding operation if they adjoin each other.

d. Slaughterhouses are animal feeding operations.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Animal waste means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.

Animal waste management system means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.

Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.

Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.

Child care facility means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.

Concentrated animal feeding operation (CAFO) means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.

Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.

Correctional community residential center (CCRC) means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal

infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.

Correctional institution means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.

Federal prisoners means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.

Liquid manure or liquid animal waste system means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.

Multi-purpose senior center is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

Prisoner means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

Private school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

Public school is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.

Senior housing project means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

Topsoil means material suitable for vegetative growth.

Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

Water source means a well, spring or other similar source that provides water for human consumptive use.

(Ord. No. 2006-01(S), § 4, 8-1-06; Ord. No. 2002-14, § 1, 6-4-02; Ord. No. 98-33, § 2, 2-16-99)

21.25.040. - Permit required for commencement of certain land uses.

A. It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance:

1. correctional community residential center (CCRC) pursuant to KPB 21.27;
2. commercial sand, gravel or material site pursuant to KPB 21.29; and
3. concentrated animal feeding operation (CAFO).

(Ord. No. 2002-14, § 2, 6-4-02; Ord. No. 98-33, § 2, 2-16-99)

21.25.050. - Permit considerations—Public hearing required.

A. Within 21 days of receiving an application, the planning director or designee shall review the

submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting.

- B. When the application is scheduled to be considered, the planning commission shall conduct a public hearing to consider the permit application, and shall either approve, modify or disapprove the permit application. Those wishing to contest issuance of the permit may submit evidence and be heard at the hearing. Before granting the permit, the commission must find at a minimum that the proposed activity complies with the requirements of this chapter. Planning commission approval of these conditional land use permits shall be by resolution. Permits shall be conditioned upon continued compliance with this chapter and other applicable code provisions.
- C. There shall be written findings supporting the planning commission's decision on the permit application. The decision shall be distributed to the parties of record before the planning commission, with a notice of right to appeal to the hearing officer.

(Ord. No. 99-29, § 1, 6-15-1999; Ord. No. 98-33, § 2, 2-16-1999)

21.25.060. - Notice.

Notice of the pending application shall be published two times in a newspaper of general circulation in the local area in which the land use is proposed. The notice shall also be posted in the post office(s) of the impacted community. At the beginning of the notice period a copy of the notice shall be sent by regular mail to all owners and/or leaseholders of record of property located within a radius of one-half mile of the subject property. The notice shall contain a description of the proposed location, the type of proposed land use, the applicant's name, where written comments may be submitted, the last date for which written comments may be submitted, and the date, time and location of the public hearing.

(Ord. No. 98-33, § 2, 2-16-1999)

21.25.070. - Compliance with other laws.

Applicants' land use operations shall comply with all applicable federal, state and local laws.

(Ord. No. 98-33, § 2, 2-16-1999)

21.25.080. - Permit revocation.

A permit issued pursuant to this chapter may be revoked pursuant to KPB.21.50 if the permittee fails to comply with the provisions of this chapter. The borough clerk shall provide at least fifteen (15) days written notice to the permittee of a revocation hearing before the hearing officer. The notice shall provide specific

grounds for the proposed revocation. If the permittee provides written evidence to the planning director demonstrating reasonable compliance with this chapter within the thirty day period then the revocation hearing may be canceled, at the discretion of the planning director.

(Ord. No. 2011-34, § 7, 10-11-11; Ord. No. 98-33, § 2, 2-16-1999)

21.25.090. - Penalty for violation.

Violations of this chapter and other CLUP provisions adopted in accordance with this chapter are subject to the enforcement of the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation.

(Ord. No. 2011-34, § 8, 10-11-11; Ord. No. 98-33, § 2, 2-16-1999)

21.25.100. - Appeals.

An aggrieved party may appeal the denial, modification, or approval by filing an appeal to the hearing officer within 15 days of the date of notice of the decision. Appeals from actions taken under this chapter shall be conducted in accordance with the appellate procedures established in Chapter 21.20 of this code.

(Ord. No. 2017-22, § 6, 9-5-17; Ord. No. 2005-30, § 8, 8-2-05; Ord. No. 98-33, § 2, 2-16-1999)

21.25.110. - Conflict with local option zoning districts.

Except as otherwise specifically provided by another provision of this chapter, the restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by any state, federal or local authority including local option districts established pursuant to KPB 21.08.

(Ord. No. 98-33, § 2, 2-16-1999)

21.25.120. - Policies and procedures.

The mayor is authorized to adopt policies and procedures implementing this chapter.

(Ord. No. 98-33, § 2, 2-16-1999)

21.25.130. - Prior existing uses.

This chapter shall not apply to uses commencing before the effective date of this ordinance provided that the subject use continues in the same location and such use is not expanded beyond the smaller of the lot, block, or tract lines as they exist on May 21, 1996. Where a parcel subject to a pre-existing use is further subdivided after May 21, 1996, the use may not be expanded beyond the boundaries of the lots, tracts, or parcels it occupies on February 16, 1999 to new parcels created by the subdivision.

(Ord. No. 98-33, § 2, 2-16-1999)

21.25.140. - Variances.

Variances from the requirements for conditional land use permits may be requested pursuant to KPB 21.05.

(Ord. No. 98-33, § 2, 2-16-1999)