

Introduced by: Mayor
Date: 12/06/16
Hearing: 01/17/16
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2016-44**

**AN ORDINANCE AMENDING KPB 20.10 AND KPB 21.50 REGARDING
VIOLATIONS AND ENFORCEMENTS**

- WHEREAS,** a new enforcement code was adopted in 2011 for land use regulation violations; and
- WHEREAS,** the borough has been implementing the new enforcement code for five years; and
- WHEREAS,** some revisions to the enforcement code would provide clarity and aid enforcement; and
- WHEREAS,** approximately 250 warnings have been issued, 16 stipulated agreements entered, and five enforcement notices have been tracked as issued since KPB 21.50 was adopted; and
- WHEREAS,** the borough has collected \$37,350 in fines for violations pursuant to KPB 21.50; and
- WHEREAS,** KPB 21.50 has proven to be an effective enforcement tool for land use regulations; and
- WHEREAS,** there is currently not an administrative enforcement process for violations of KPB Title 20, the platting code, and the KPB 21.50 process could also work for subdivision code violations; and
- WHEREAS,** goal 6.6 of the comprehensive plan is to reduce conflicts arising from incompatible land use; and
- WHEREAS,** the need for effective enforcement of land use regulations was raised during community outreach for the plan; and
- WHEREAS,** the borough's best interest will be served by amending its violation and enforcement ordinance; and
- WHEREAS,** the planning commission at its regular meeting of December 12, 2016, recommended approval by unanimous consent;

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

SECTION 1. That KPB 20.10.030 is hereby amended as follows:

20.10.030. Violations and remedies.

- A. No person shall transfer, sell, and offer to sell, or enter into a contract to sell land that must be subdivided under this ordinance until an approved final plat has been recorded.
- B. No person shall file or record a plat or other document depicting subdivided land unless the plat or document has been approved under this ordinance.
- C. A person shall not violate a provision of AS 29.40, KPB Title 20, or a term, condition or limitation imposed by the platting authority.
- D. Pursuant to AS 29.40.190(a), the borough may request the superior court enjoin a violation or threatened violation of AS 29.40 to this title.
- E. The borough or an aggrieved person may institute a civil action against a person who violates KPB 20.10.030(A), (B), or (C). A civil penalty not to exceed \$1,000 may be imposed for each violation. Each day that an unlawful act or condition continues is a separate violation.
- F. ~~[BREACH]~~ Violation of KPB 20.10.030(A), (B), or (C) ~~[SHALL]~~ constitute[s] a misdemeanor punishable by a fine not to exceed \$1,000 and by imprisonment not to exceed 90 days for each violation. Each transfer, sale, offer to sell, or entry into a contract to sell any land subdivided in violation of this title shall constitute a separate offense.
- G. Violation of KPB 20.10.030(A), (B) or (C) is subject to a fine not exceeding \$1,000 for every day the violation continues which shall be enforced through the applicable provisions of KPB 21.50.010-170.

SECTION 2. That KPB 21.06.030(1) is amended as follows:

21.06.030. General provisions.

- A. *Lands to Which this Chapter Applies.* This chapter shall apply to all flood hazard areas within the Kenai Peninsula Borough exclusive of the cities of Homer, Kenai, Seward, and Soldotna.
- B. *Basis for Establishing Flood Hazard Areas.* Flood hazard areas are identified as follows:

1. By the areas of special flood hazard identified by the Federal Insurance Administration in scientific and engineering report entitled "Flood Insurance Study" (FIS) for the Kenai Peninsula Borough, Alaska dated May 19, 1981, revised on July 5, 1983, December 6, 1999, and September 27, 2013. These areas are depicted on the effective flood FIRM and DFIRM Panels. The map panels numbered 020012-1350 and 1700 have been deleted and the areas depicted by these panels are not subject to the terms of this chapter. Excluding these panels, the flood insurance rate maps are adopted by reference and declared to be a part of this chapter. The flood insurance rate maps are on file at the planning department. The best available information for flood hazard as outlined in KPB 21.06.040(C)(3) shall be the basis for regulation until a new FIRM or DFIRM is issued which incorporates the base flood plain data obtained pursuant to that section.
 2. The 1986, 1995, and 2006 KPB GIS mapped flood data area within the Seward-Bear Creek Flood Service Area (SMFDA) outside the city limits of Seward, not including any Special Flood Hazard Area identified in a current, effective FIRM or DFIRM. A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area, the entire lot shall be subject to the provisions of this chapter. Special provisions for development permits in the KPB mapped flood data area are set forth in KPB 21.06.045. Data available from other federal, state or other sources shall be reviewed and reasonably utilized including but not limited to the following:
 - a. "Flood of October 1986 at Seward Alaska," USGS Water-Resources Investigation Report 87-4278. Jones, S.H., and Zenone, Chester. (1988).
 - b. "Hydrologic Reconnaissance near Fourth of July Creek, Seward, Alaska." USGS Water Resources Investigations 81-21. Nelson, G.L. (1981).
- C. *Warning and Disclaimer of Liability.* The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from

flooding or flood damages. This chapter shall not create liability on the part of the Kenai Peninsula Borough, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

- D. *Noncompliance—Enforcement.* Structures and activities which are not permitted or allowed by this chapter are prohibited. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements shall be enforced by the remedies set forth in KPB 21.50. Each day a violation continues is a separate violation.

SECTION 3. That KPB 21.50.010 is hereby amended as follows:

21.50.010. Purpose.

The purpose of this chapter is to promote compliance with borough ordinances and promote consistency in enforcement of borough land use and subdivision regulations.

SECTION 4. That KPB 21.50.030 is hereby amended as follows:

21.50.030. Violations.

- A. Each of the following is a violation of [THIS TITLE] borough code:
1. A use or occupancy of land or a structure that conflicts with a provision of [THIS] KPB [T]Title 20 or 21, or a permit, entitlement or enforcement order issued under [THIS] these titles.
 2. The construction, alteration, repairing or moving of a structure or part thereof that conflicts with a provision of [THIS TITLE], or a permit issued under [THIS] KPB [T]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 [THIS] KPB [T]Title 20 or 21 requires a permit, variance or exception without first obtaining the permit, variance or exception, or after [the] 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 [this] KPB [T]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 [A PROVISION OF THIS] KPB [T]Title 20 or 21, or a permit issued under this title.
- B. Each act or condition [IS] constitutes a violation [OF THIS TITLE,] and every day upon which the act or condition occurs, is a separate violation.

SECTION 5.

That KPB 21.50.040 is hereby amended as follows:

21.50.040. Remedies for violations.

- 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 [500.00] 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.[080]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. 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 6.

That KPB 21.50.055 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
<u>KPB</u> <u>20.10.030(A)</u>	<u>Offering land for sale without final plat approval</u>	<u>\$300.00</u>
<u>KPB</u> <u>20.10.030(B)</u>	<u>Filing/recording unapproved subdivision/plat</u>	<u>\$300.00</u>

<u>KPB</u> 20.10.030(C)	<u>Violation of subdivision code or condition</u>	<u>\$300.00</u>
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
<u>KPB</u> 21.06.030(D)	<u>Structure or activity prohibited by KPB 21.06</u>	<u>\$300.00</u>
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/ <u>Violation of SMFDA permit conditions</u> /Floodplain Management	\$300.00
KPB 21.06.[055]050	[FAILURE TO OBTAIN FLOODPLAIN LOGGING OR FUEL STORAGE PERMIT]/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 <u>Also applies to KPB 21.26 material site permits</u>	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits <u>Also applies to KPB 21.26 material site permits</u>	\$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 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice[/STOP WORK ORDER]	<u>\$1,000.00</u> [500.00]
KPB 21.50.130(I)	Violation of an enforcement order	<u>\$1,000.00</u> [500.00]

- B. For enforcement notices involving a failure to obtain a permit, if a permit is subsequently granted by staff or the planning commission, the permit or application fee shall be doubled. This section is applicable to violations of KPB 21.06.040, 21.06.045, [21.06.055,] [21.09.090(E),] 21.18.071, 21.18.072, 21.18.081, 21.18.090, 21.25.040, 21.29.020[,] [21.40.100, 21.42.110(D)].

SECTION 7. That KPB 21.50.060 is hereby amended as follows:

21.50.060. Permit compliance.

A permit may not be issued [UNDER THIS TITLE] if:

- A. Either the permit applicant or the owner of the parcel that is the subject of the application has any unresolved enforcement notices or enforcement orders regarding [OUTSTANDING] violations of the chapter under which the permit is being sought; or
- B. Either the parcel that is the subject of the permit application or any adjacent parcel in the same ownership has any [OUTSTANDING VIOLATIONS OF THIS TITLE.] unresolved enforcement notice or is in violation of an enforcement order.

SECTION 8. That KPB 21.50.100 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:
 - 1. The names and addresses of all persons to be served with the notice under KPB 21.50.100(B);
 - 2. A legal description and street address or similar description of each property on which an alleged violations is located;
 - 3. A citation to each provision of this title that is alleged to have been violated, and a statement of the facts that constitute each alleged violation in sufficient detail to provide the recipient with a reasonable opportunity to respond to the allegations;
 - 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;
 - d. The repair or rehabilitation of a condition or use of land, a structure, or a vehicle or other personal property; and
 - e. Obtaining a permit.
5. The remedies that borough will seek for the alleged violation, including but not limited to the suspension or revocation of a permit issued under this title;
 6. The date, time, and place of the hearing required by KPB 21.50.130, which shall be at least 20 but not more than 30 days from the first service of the enforcement notice;
 7. Notification of the right to respond to the allegations in writing before the date of the hearing and the time within which to do so, and of the right to appear and present evidence at the hearing, and to be represented by legal counsel in the enforcement proceeding; and
 8. The address, telephone, facsimile number and email address for contacting the borough regarding the violation.
- B. The borough shall serve an enforcement notice and response form on each alleged violator, and each record owner of the real property that is the location of the alleged violation according to the records of the borough assessing department. An enforcement notice may be served upon a person by:
1. Delivery to the person or the person's authorized agent;
 2. Certified mail, return receipt requested, restricted delivery, to the person or the person's authorized agent;
 3. Any other method of delivery where the person acknowledges receipt of the enforcement notice in writing; or
 4. Publication notice as provided in Rule 4(e)(2) of the Alaska Rules of Civil Procedure, but only if reasonable attempts to utilize the methods prescribed by subparagraphs (1) through (3) above are not successful.
- C. Where practical the borough may post a copy of an enforcement notice at the real property that is the location of the alleged violation

where it is likely to be observed by one or more violators or the owner of the property. The borough also may post a summary of the enforcement notice at or near the location of the alleged violation where it will inform the public of the enforcement action. The failure to post a notice under this subsection shall have no effect on the enforcement proceeding.

- D. The person who serves or posts an enforcement notice shall file an affidavit in the enforcement proceeding stating the date, time and method of service and the person served, or the date, time and place of posting. Once served the enforcement notice shall be filed with the borough clerk by the end of the next business day.
- E. The issuance of an enforcement notice regarding a violation does not stay or preclude any other action at law or in equity related to the violation.
- F. Removing a posted enforcement notice or violating an enforcement notice is a separate violation of this title.
- G. Continuing work when an enforcement notice includes a stop work order is a separate violation of this chapter.
- H. The borough and a property owner or occupant may enter an enforcement agreement as provided herein. An enforcement 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. The enforcement agreement shall include an agreement to remedy the violation and pay civil fines as described within the agreement within the timeframe agreed upon. The enforcement agreement shall be submitted for signature of the hearing officer as an enforcement order. The hearing officer shall approve the agreement upon finding it is in compliance with KPB 21.50. It shall have the full force and effect of an enforcement order issued under KPB 21.50.130(G).
 - 1. A suspended fine may be included in an enforcement agreement between the borough, property owner, occupant or responsible party. An enforcement agreement may be entered requiring a fine of up to the maximum fine allowable for each violation cited in an enforcement notice. The fine for all but the minimum fine required by KPB 21.50.055(A) may be suspended to a date certain to allow time to obtain compliance. All or a portion of the suspended fine may be forgiven by order of the hearing officer commensurate with the compliance obtained with the enforcement order.

SECTION 9.

That KPB 21.50.120 is hereby amended as follows:

21.50.120. Prehearing procedure.

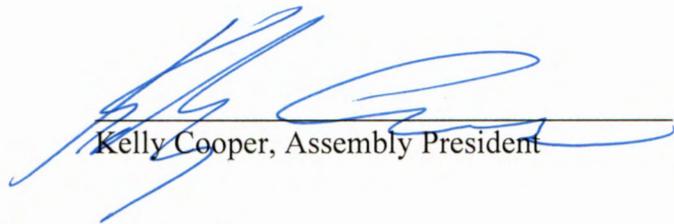
- A. The borough clerk shall maintain a list of persons who have been retained as hearing officers. Hearing officers shall be assigned cases in the sequence in which they appear on the list. Within three (3) business days after receiving enforcement notice the borough clerk shall transmit the enforcement notice to the qualified and available hearing officer who is next in rotation on the list. The clerk shall provide written notice to the parties of which hearing officer has been assigned to the proceeding within three (3) business days of submitting the enforcement notice to the hearing officer.
- B. Subject to approval by the hearing officer, the parties may agree to extend or reduce the time for a hearing. The borough clerk shall mail notice of the date and time of the hearing to each party. The notice shall identify the proceeding and the hearing officer, and describe the hearing procedure and the right of a party to the proceeding to review the administrative file regarding the enforcement notice. The failure of any person to receive actual notice of the hearing shall not invalidate any order or decision of the hearing officer.
- C. A party to the proceeding may submit to the borough clerk a written request for the assignment of the proceeding to a different hearing officer accompanied by a detailed statement supporting grounds for disqualification of the hearing officer under KPB 21.50.110(E) within three (3) business days from issuance of the notice of hearing officer. The hearing officer shall respond to such a request in writing within five days after its submission.
- D. Upon a motion by any party and a finding of good cause, the hearing officer may change the date or time of the hearing. Good cause is limited to a fact or circumstance that would significantly prejudice a party in the presentation of its case at the date or time scheduled for the hearing. Reassignment of a hearing officer may be a valid reason for changing the date and time of the proceeding.
- E. Not less than seven (7) days before the hearing, the administrative official shall provide each respondent the administrative official's complete file regarding the enforcement notice, except for the redaction of 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.]

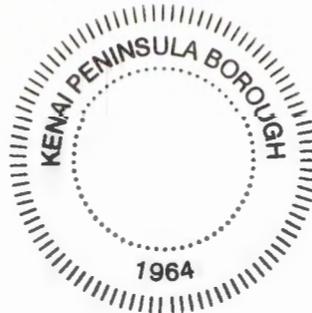
- F. Not less than seven (7) days before the hearing the respondent shall file evidence relevant to the alleged violation and shall submit a written response to the allegations with the borough clerk which shall include:
1. The full name, mailing and physical address and daytime telephone number of the respondent, and of the person's attorney, if any; and
 2. A statement that the person admits, denies, or has insufficient information to respond regarding each allegation in the enforcement notice. A statement of insufficient information has the effect of a denial. Any allegation that is not denied shall be deemed admitted.
 3. Signature of the respondent.
- G. The administrative official that issued an enforcement notice may dismiss the enforcement notice before the hearing by written notice to the hearing officer, each person entitled to service of the enforcement notice and each other person who submitted a request for hearing, if the administrative official finds:
1. The enforcement notice was issued in error; or
 2. All violations that were alleged in the enforcement notice have been corrected or abated, and the borough does not seek any further remedies or penalties under the enforcement notice.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF JANUARY, 2017.

ATTEST:


John Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bagley, Dunne, Fischer, Gilman, Hibbert, Holmdahl, Ogle, Welles, Cooper

No: None

Absent: None