

Introduced by: Mayor @
Req. of Task Force
Date: August 1, 1989
Hearing: Sept. 19, 1989
Vote:
Action:
9-19-89 Remanded to Committee
for Review & Revision
11 Yes, 3 No

KENAI PENINSULA BOROUGH

ORDINANCE 89-40

ENACTING A NEW CHAPTER 21.12 TO PROVIDE A PERMIT SYSTEM FOR
CONDITIONAL LAND USES AND REPEALING THE CURRENT KPB 21.12
NOXIOUS, INJURIOUS AND HAZARDOUS USES ORDINANCE

WHEREAS, in the past two years a number of disputes have
arisen regarding the appropriate location of certain land use
activities in close proximity to and disruptive of neighboring
residential uses; and

WHEREAS, residents from many different areas of the borough
have approached the Kenai Peninsula Borough Planning Department
seeking to limit neighboring land use activities which, for
various reasons, they felt threatened the peaceful enjoyment of
their properties; and

WHEREAS, the only current borough land use control for areas
outside of the cities falls under KPB 21.12, the Noxious,
Injurious or Hazardous Uses ordinance, which has been frequently
challenged under claims that it is so vague as to not provide
reasonable notice of what activities and uses are regulated
thereunder; and

WHEREAS, the current KPB 21.12 requires a tremendous amount
of time and effort on the part of the borough administration for
each individual challenge brought by the public, adversely
affecting the normal work of the administrative departments
involved; and

WHEREAS, the current KPB 21.12 is a complaint-driven
ordinance which is triggered only by a formal complaint filed by
the public, raising legitimate concerns with the consistency of
borough enforcement; and

WHEREAS, an assembly-appointed task force has, through six
months of public meetings, developed a proposed new conditional
land use ordinance which will address and alleviate concerns with
vagueness, and consistency of enforcement by setting out clear
objective criteria to be applied to express categories of uses;

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

Section 1. That the current KPB Chapter 21.12 entitled
"Noxious, Injurious or Hazardous Uses" is hereby repealed.

Section 2. That a new KPB Chapter 21.12 is enacted to read as follows:

CHAPTER 21.12

CONDITIONAL LAND USE

21.12.010 Scope of Chapter. This chapter sets out and defines specific land uses which may be a threat to public health, safety and/or welfare, and are, therefore, permitted in the rural district only where the standards and conditions of this chapter are met and a permit is issued.

21.12.015 Statutory Authority. This chapter is adopted under the authority of AS 29.40.010 to AS 29.40.190.

21.12.020 Jurisdiction of Provisions and Planning Commission

A. The planning commission is authorized to issue conditional land use permits upon consideration of submitted applications and hearing public testimony.

B. The assembly, by ordinance, acting upon the recommendation of the planning commission may find that other land uses, not specified herein, shall be subject to a conditional land use permit after applicable performance standards have been enacted.

21.12.030 Conditional Use Permit Required.

All land uses of a commercial nature that fall within the following categories may be carried out only following issuance of a conditional use permit:

A. Excavating/Extracting; including coal and mining sites, oil and gas drilling sites, sand and gravel extraction sites, and other uses of similar character and impact.

B. Industrial; including asphalt and cement batch plants, energy generating plants, oil and gas pipeline pumping stations, oil refineries, petrochemical plants, sawmills, seafood processing facilities.

C. Recreational Uses; the following specific uses: motor vehicle racetracks, weapon ranges.

D. Hazardous or Toxic Materials Handling Facilities; including explosives storage sites, underground storage tanks, above-ground storage tanks, chemical storage facilities, transportation depots and transfer sites, and other uses of similar character and impact.

E. Material/Waste Handling Facilities; including incinerators, landfills, septic waste disposal sites, sewer treatment plants, junkyards and other uses of similar character and impacts.

F. Hazardous Waste Management Facilities; including storage for over 90 days, treatment, and disposal sites, transportation depots, injection wells.

G. Drilling Waste Disposal Facilities: including sites for disposal or storage for over 90 days, and injection wells for fluid and solid drilling wastes.

21.12.035 Permit Requirements. Any above listed use established after the date of adoption of this ordinance shall be operated so as to comply with the following requirements:

A. NOISE. The sound pressure level for any listed use, to be measured at the receiving nonconsenting property line at the point closest to the proposed site, may not exceed the following levels:

DAY: 70 DBA 7:00 a.m. - 7:00 p.m.
 NIGHT: 60 DBA 7:00 p.m. - 7:00 a.m.

B. VIBRATION. No continuous, frequent, or repetitive vibration levels shall be produced which exceed the following listed displacement across the receiving nonconsenting parcel boundaries:

<u>Frequency**</u>	<u>Displacement*</u>	
	<u>7am to 7pm</u>	<u>7pm to 7am</u>
5	17	0.6
10	4	0.3
20	1.3	0.15
30	0.7	0.08
40	0.5	0.0
50	0.4	0.0
60	0.0	0.0
>60	0.0	0.0

* measured in thousandths of an inch

**measured in cycles per second

C. BUFFERS. All categories of conditional uses must provide and retain a buffer of undisturbed natural vegetation between the site boundary and the property boundary of all contiguous parcels. The following buffers are required:

1. All categories must provide and retain a basic buffer of either (a) 250 feet of natural or improved

vegetation between the conditional use site boundary and all nonconsenting property boundaries; or (b) 50 feet of natural or improved vegetation between the site boundary and all nonconsenting property boundaries plus either a minimum six-foot earthen berm or a minimum six-foot fence which provides visual screening surrounding the site boundary.

2. "Drilling Waste Disposal Facilities" -- a safety buffer of 1,320 feet is required between the site boundary and all nonconsenting property boundaries. Within this buffer, requirements of No. 1 above shall be met.

3. "Hazardous waste management facilities" -- a safety buffer of 2,640 feet is required between the site boundary and all nonconsenting property boundaries. Within this buffer, requirements of No. 1 above shall be met.

D. CONTROLLED ACCESS. Where it is found necessary for public health and safety, or environmental protection, the planning commission may require fencing.

E. Federal and State Regulation. All conditional use permits are contingent upon applicant first obtaining and remaining in compliance with all Federal and State permits applicable to applicant's facility or land use. Applicant must provide a list of all applicable permits with the application for conditional use permit, must provide copies of all permits when issued, and must inform KPB within 24 hours of any permit revocation or noncompliance with any law or regulation.

F. Safety Plan. A safety plan providing public information must be submitted containing the following information for the identified classifications of conditional use.

1. "Hazardous or Toxic Materials Handling Facility," "Hazardous Waste Management Facility," "Drilling Waste Disposal Facility," and "Industrial" Uses. Applicant must provide a safety plan setting out the following information:

- a. Description of measures and precautions to be used to prevent spillage of waste or potentially harmful materials/substances onto the ground surface or into surface water ground water.
- b. Spill control response plan for onsite accidents.
- c. Plan for public information/notification of accidents.

2. "Weapons Ranges." Applicant must provide KPB with a safety and operations plan in conformance with NRA Facility Construction and Safety Standards.

3. "Racetracks." Site plan must provide for safety fence between spectator viewing area and track.

G. Erosion/Dust Control Plan. Where the activity to be permitted is of the type reasonably anticipated to create erosion or the onsite generation of fugitive dust, applicant must provide to KPB: 1) an erosion control plan describing methods to be utilized to prevent or minimize erosion and to maintain or preserve the natural drainage pattern of the site and surrounding area; and/or a dust control plan to control and minimize on-site-generated fugitive dust to a minimum through watering, covering of dust sources and restricted vehicle operation as necessary.

21.12.040 Exceptions.

The planning commission may authorize exceptions to any of the requirements set forth in this chapter. The application for Conditional Land Use Permit shall present the commission with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the exception and the facts relied upon. The commission shall find the following facts before granting any exceptions:

- A. That special condition and circumstances exist which are peculiar to the land or structures involved and are not generally applicable to other lands and structures in the rural district.
- B. That the special conditions and circumstances have not been caused by actions of the applicant.
- C. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area where the permitted property is situated.
- D. That the value of adjoining properties will not be significantly impaired.

An exception will not be granted based solely on a claim of financial hardship or inconvenience, and any exception shall be the minimum exception necessary to permit the reasonable use of the land or structure.

21.12.045 Definitions.

A. "Abandoned" means a discontinuation of a nonconforming use for the continuous period set out in the nonconforming use permit.

B. "Chemical storage facilities" means any facility storing, for a period of over 10 days duration, any chemical substance of an amount in excess of the threshold planning

quantity listed for regulation under SARA Title III including the "extremely hazardous substances" listed in 40 CFR Part 355, any CERCLA hazardous substances listed in 40 CFR Part 302, Table 302.4, any SARA Section 313 toxic chemicals, and any petroleum and natural gas product whose composition and characteristics would place it under the above cited regulations but for the exemption provided by 42 USC Section 9601 (14).

C. "Commercial nature" means any use operated for production of income, including all activities directly subsidiary to an income producing operation.

D. "Conditional use site" means all land utilized, altered or disturbed by the construction, development, and/or operation of a conditional use and shall include all structures, other appurtenances, and improvements, other than access roads, utilized in conjunction therewith.

E. "Drilling wastes" means all waste substances as defined by the Alaska Administrative Code at 18 AAC 60.910(19).

F. "Hazardous" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress, (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does include petroleum, including crude oil or any fraction thereof, and the term does include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas.

G. "Hazardous waste" means all waste substances defined by the Alaska Administrative Code at 18 AAC 63.900.

H. "Natural Vegetation" means undisturbed existing tundra, grass, shrubbery or trees.

I. "Nonconforming use" means any conditional use legally existing prior to adoption of this ordinance which but for its prior existence would be prohibited, regulated or restricted under this ordinance.

J. "Nonconsenting Property" means all real property with the exception of a parcel for which applicant has received written, notarized consent from the record owner on a form provided by the KPB Planning Department.

K. "Seafood processing facilities" means those facilities required to obtain a waste water disposal permit under the regulations of the Alaska Department of Environmental Conservation.

L. "Toxic" means those substances or substance combination, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chains, will, on the basis of information available, cause death, disease, behavioral or physiological abnormalities, malignance, genetic mutations, or physical deformations, in affected organisms or their offspring.

M. "Transportation depots and transfer sites" means any site utilized for transfer of "hazardous or toxic materials" or "hazardous wastes" from one transport (i.e. truck, railroad car, etc.) to another. Waste generators are excluded from this definition for handling of those wastes generated on site.

21.12.050 Nonconforming uses.

A. Existing nonconforming uses are permitted to continue operation subject to the provisions of this section, provided that each such nonconforming use shall be required to apply for a nonconforming conditional use permit within 18 months of enactment of this ordinance and provide such information as requested such that the borough will have record of the location, nature, and size/extent of nonconformance of all such uses. Failure to apply for a permit within 18 months of enactment of this ordinance shall terminate any rights to continued operation as a nonconforming use and thus require full conformance with all provisions of this chapter for issuance of permit. The application fee is waived in these cases.

B. No existing nonconforming use shall be expanded to include an adjacent parcel or parcels unless the area of expansion meets all requirements of this chapter. No nonconforming use which is abandoned shall be renewed without full compliance with the requirements of this chapter. No use already established prior to the date of adoption of this ordinance shall be so altered or modified as to conflict with, or further conflict with, these performance standards.

21.12.060 Permit Application Requirement. Applicants for conditional use permits shall obtain application forms and instructions from the planning department. The application shall contain, but not be limited to, the following information:

1. Legal description of the parcel of land for which a conditional use permit is requested.

2. Name and address of the record owner of the subject parcel.

a. If the proposed operations are to be conducted by other than the record owner the name and address of the operator shall also be shown together with a copy of the document showing the operator's interest in the land.

b. In either case a contact person shall be identified who is authorized to represent the applicants.

3. A clear description of the intended use of the parcel of land.

4. Operations plan. All applications shall include an operations plan showing a tentative schedule for construction and production thereafter, together with a narrative and maps or plans clearly showing how the provisions of 21.12.030 shall be met.

5. A fee of \$300 shall accompany the submission of an application.

21.12.065 Action by Planning Commission. The request for a conditional land use permit shall be placed on the planning commission agenda for public hearing not later than 60 calendar days following submission of a duly completed application. This 60 day hearing requirement shall not apply to applications for nonconforming conditional use permits. Upon closing of the public hearing the planning commission shall take action on the request no later than the next regular meeting following the close of the public hearing. Approval shall be in the form of a resolution authorizing the director of planning, or designee, to issue a permit, bearing his signature, within 14 calendar days after adoption of the resolution.

A. The conditional land use permit shall be recorded in the appropriate district recording office upon issuance of the permit by the planning department.

21.12.070 Public notice. Notice of public hearing shall be given in conformance with the requirements of KPB Chapter 21.11 regarding public hearings.

21.12.080 Appeals. Appeals of the final decision of the planning commission shall be made directly to the Superior Court of the State of Alaska. Such appeal must be final within 30 days of the planning commission's written determination.

21.12.090 Effect of Permit. A conditional use permit attaches to the land specified in the permit except as hereinafter stated. All subsequent owners of the property and/or operators of the facility are subject to the provisions of the original permit.

A. The planning department shall be notified in writing within 30 days of any change in owner or operator.

B. The owner of the land subject to the permit, but not utilizing the conditional use, may petition the planning commission for cancellation of the permit. Such action shall be by resolution of the planning commission.

C. A conditional land use permit shall automatically expire five years after the date of issuance if the intended use of land has not occurred or a modification to the time schedule has not been requested. In this event, a notice of such expiration shall be recorded in the appropriate district recorders office.

21.12.095 Violations - Penalties

A. The borough may institute a civil action against a person, company, corporation or other agency who violates a provision of this chapter or a condition of a permit granted by the planning commission. In addition to injunctive relief, a civil penalty not to exceed \$1,000 and imprisonment for 90 days may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.

B. Each day that an unlawful act or condition continues constitutes a separate violation.

Section 3. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 1989.

ATTEST:

Jonathan W. Sewall, Assembly President

Borough Clerk